

C.

**Office of Consumer Credit
Commissioner**

Industry

and

Departmental Operations

and

Legislative Activities

**Office of
Consumer
Credit
Commissioner**



Leslie L. Pettijohn
Commissioner

2601 N Lamar Blvd
Austin, TX 78705
www.occc.state.tx.us

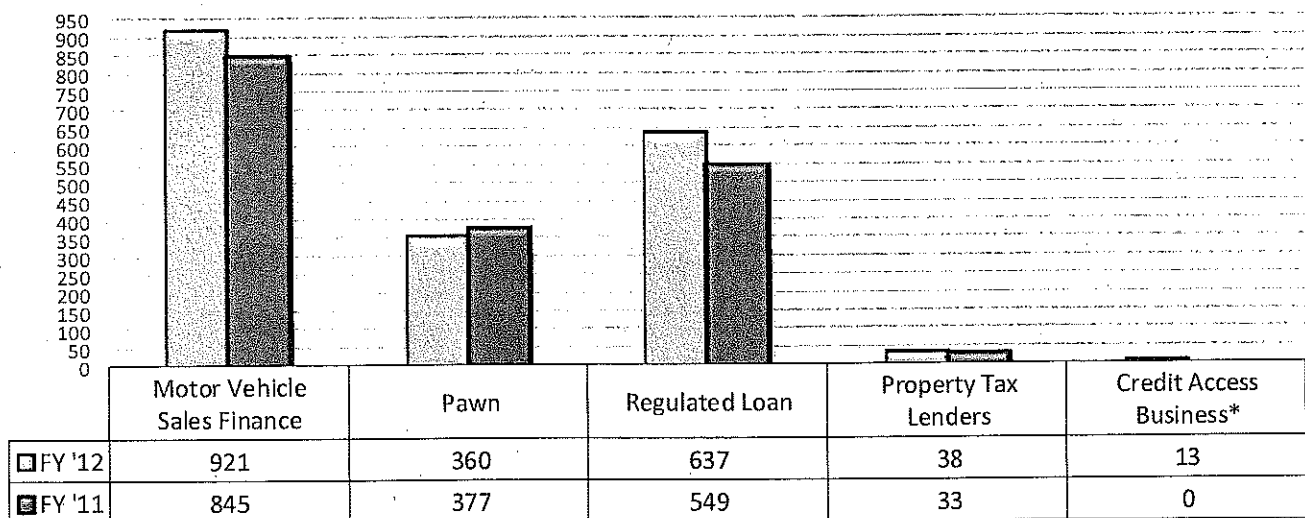
512-936-7600
Fax: 512-936-7610
Consumer Helpline: 800-538-1579

MEMORANDUM

TO: Finance Commission Members
FROM: Rudy Aguilar, Director of Consumer Protection
DATE: June 1, 2012
SUBJECT: Consumer Protection Activities

EXAMINATION

**Examinations Conducted: Sept - Apr
Fiscal Year Comparison**



*First CAB exam March 2012

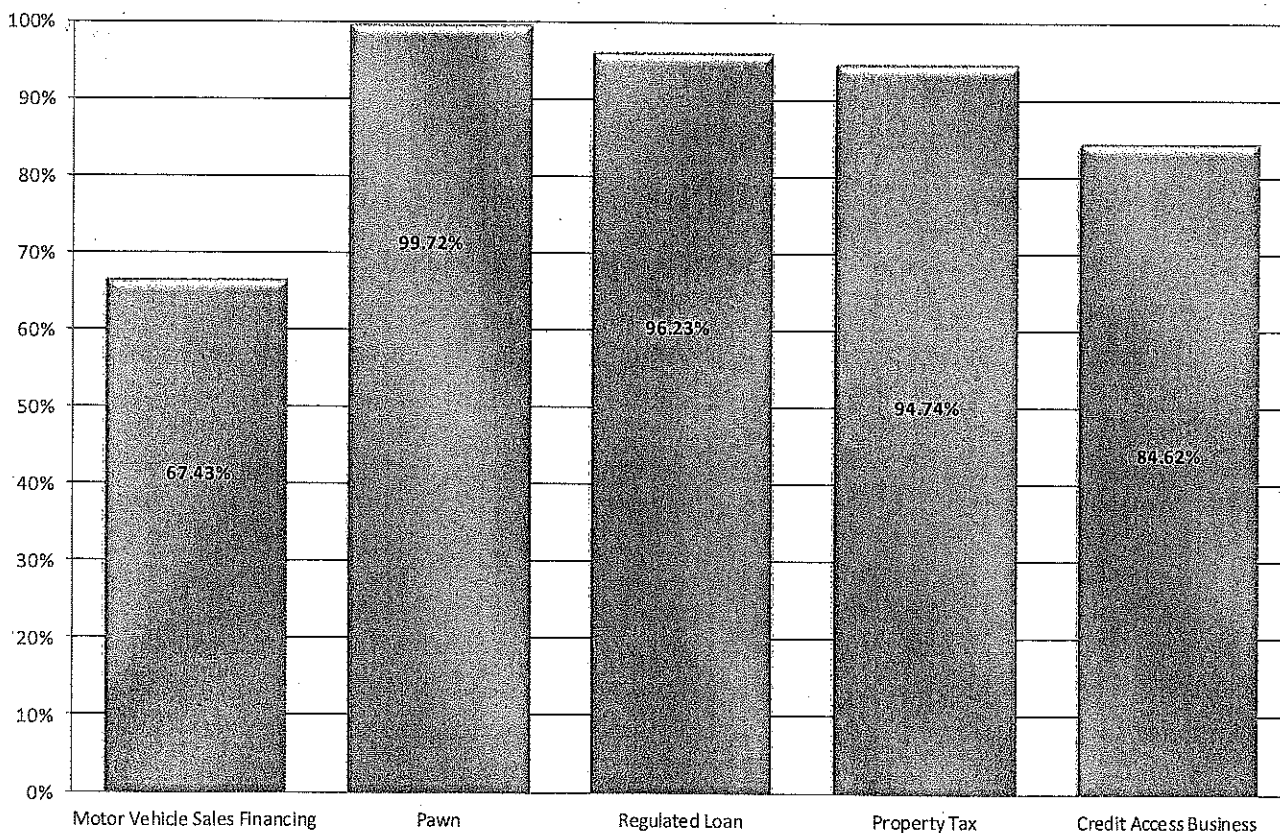
The Property Tax Lending exam/survey project has been completed. A draft version of the report resulting from the survey has been distributed for comment.

The Credit Access Business (CAB) examination of single location or small group locations has resulted in significant instances of non-compliance. Some examples of non-compliance include: expired Secretary of State registration, no Credit Service Organization contract, and unauthorized fees.

Eric Fancher, Dallas financial examiner, made a presentation at the Texas Department of Motor Vehicles Dealer seminar on May 23, 2012, in Fort Worth. I made a presentation on the second day of the seminar (May 24, 2012) and also made a presentation to the Fort Worth Independent Automobile Dealers' Association on May 24, 2012.

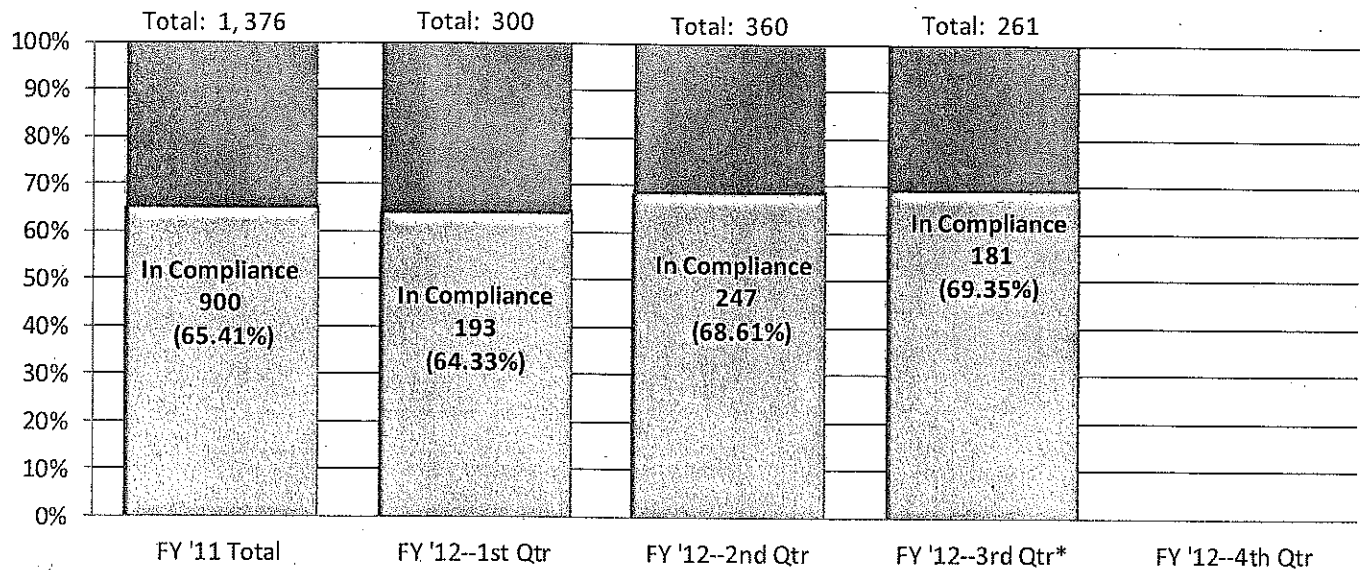
Jessica Towns was selected to fill the Austin administrative technician vacancy in the exam section. She began employment on April 26, 2012. Ilse Castañeda has been hired to fill the Dallas examiner position and will be reporting to work June 1. A second Dallas examiner position is in the process of being filled, with the second round interview conducted on May 29, 2012. The hiring for the second Dallas examiner is anticipated in time to begin a new examiner training class mid-June.

**Acceptable Level of Compliance
FY '12 (Sept 2011 - Apr 2012)**



Comparison of our motor vehicle sales finance examination activities in the most recent two years is noted on the chart below. The level of compliance has continued to increase each quarter of the current fiscal year with the year-to-date level of compliance for fiscal year 2012 (67.43%) noting slightly more than a 2% improvement from fiscal year 2011 (65.41%).

Chapter 348 Examinations: Compliance Levels



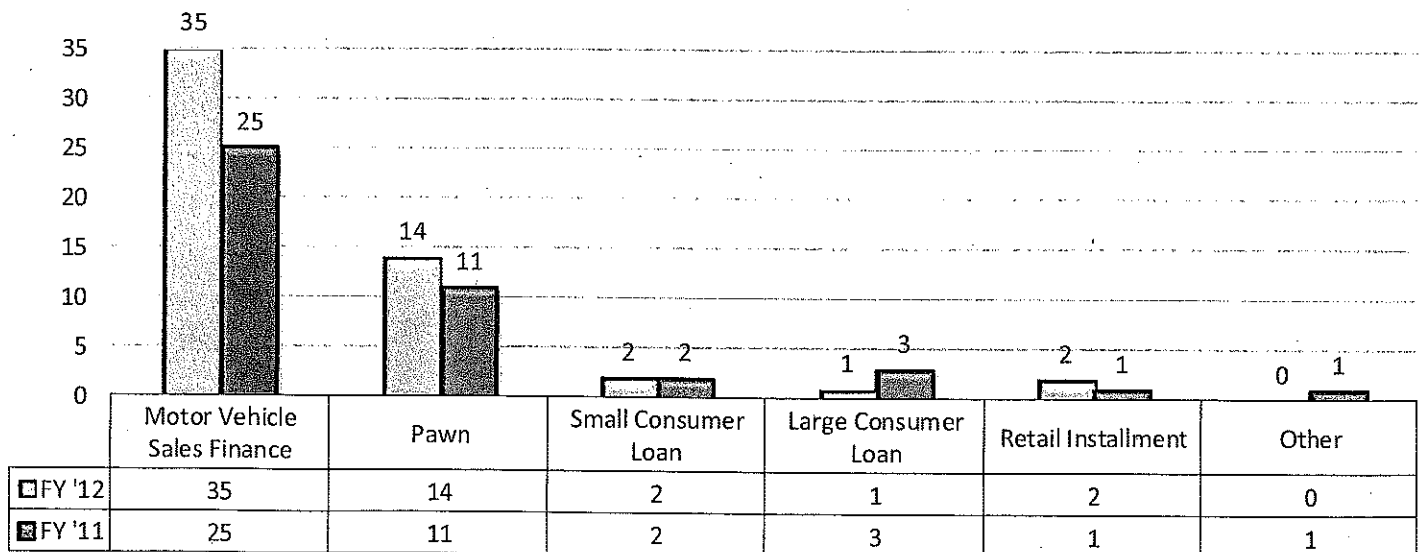
*Data through April 2012

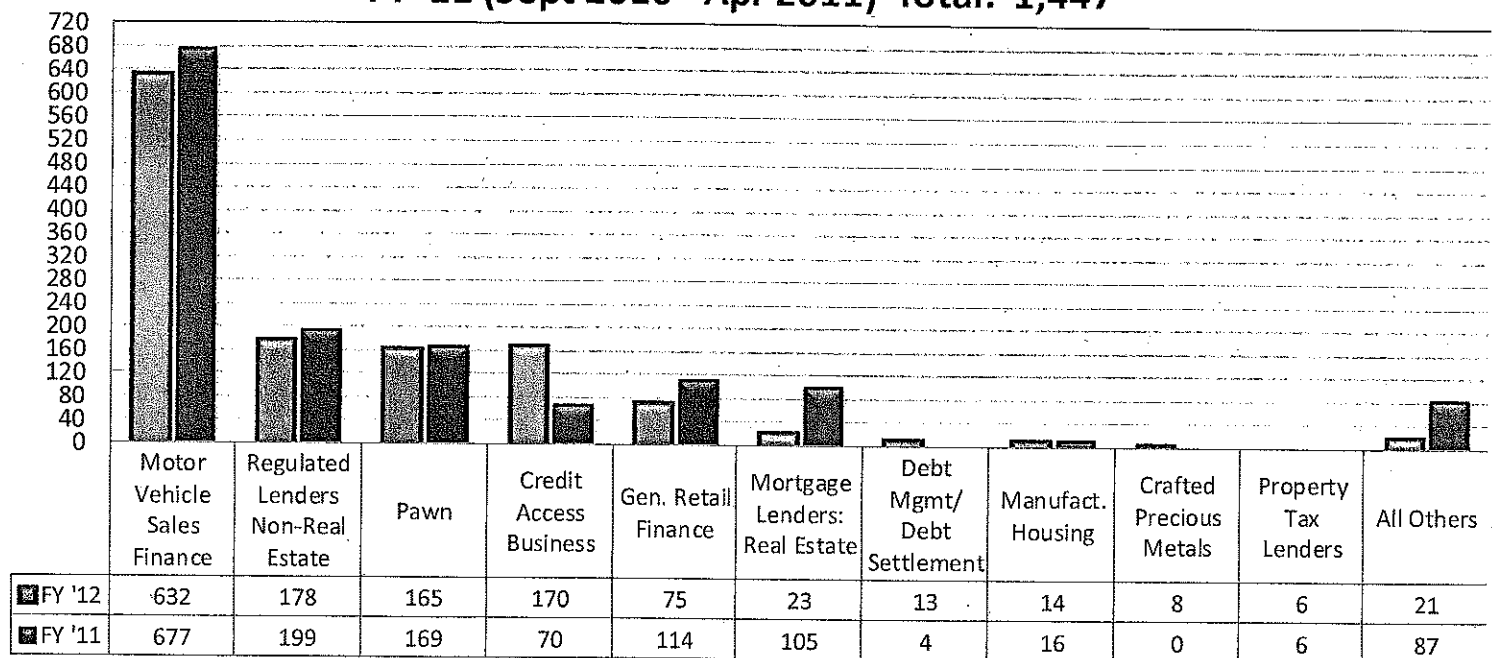
INVESTIGATION

Investigations Completed

FY '12 (Sept 2011 - Apr 2012) Total: 54

FY '11 (Sept 2010 - Apr 2011) Total: 43



CONSUMER ASSISTANCE**Complaints Processed****FY '12 (Sept 2011 - Apr 2012) Total: 1,305****FY '11 (Sept 2010 - Apr 2011) Total: 1,447**

Alfredo Hernandez, Dallas financial examiner, has been selected to fill the manager of Consumer Assistance position. His appointment to this position is effective July 1, 2012. The job posting for the two Consumer Assistance investigator positions has closed. Mr. Hernandez will be working with the Director of Consumer Protection to conduct interviews and make selections for these positions.

Motor vehicle sales finance complaints remain the most frequent complaint category. Complaints generally involve issues with repossessions, collection tactics, application of customer payments, right of rescission, and conditional delivery.

CAB complaints are separated into two categories: Chapter 393 Payday and Chapter 393 Title Loans. Complaints generally involve APR, fees, failure to understand the contract term length, and collection tactics.

LICENSING REPORT

Licensing

The Licensing Department, as of April 30, 2012, has 1,447 pending license applications and during the month of April processed 536 applications. The majority of the Credit Access Business applications that had provisional licenses have been processed. There are currently 460 provisional licenses remaining. Pawnshop and Pawnshop Employee license renewals for 2013 and Pawnshop Annual Reports for 2011 have been sent, and are due June 1, 2012. The renewals for Motor Vehicle Sales Finance licenses will be sent in early June.

The information below displays a comparison of the license and registration levels as of April 30, 2011, and April 30, 2012.

	04/30/2011	04/30/2012	CHANGE
Regulated Lenders	3,172	3,335	163
Credit Access Business	0	2,722	2,722
Pawnshops	1,543	1,540	(3)
Pawnshop Employees	7,708	8,096	388
Motor Vehicle Sales Finance	7,164	7,329	165
Commercial Motor Vehicle	0	0	0
Property Tax Lenders	89	89	0
Mortgage Loan Originators	643	724	65
Debt Management Service Providers	50	79	29
Registered Creditors	6,764	6,673	(91)
Crafted Precious Metal	0	2,348	2,348
Refund Anticipation Lenders	3,719	2,122	(1,597)
Total	30,852	35,057	4,205

CREDIT ACCESS BUSINESS QUARTERLY REPORT

Reporting Update

First quarter reports were due on April 30, 2012. A combination of electronic filings (permanent licensed companies) and paper filings (provisional licensed companies) was received. Of the permanent licensed companies, 75.05% (2,042 out of 2,721) were able to meet the first quarter deadlines. Notices were sent to companies that failed to file, informing them of the requirement.

Electronic report development for the data is ongoing. Aggregate data will be compiled shortly. Meanwhile, submissions are being reviewed for consistent reporting and refinements needed for questions and instructions.

ADMINISTRATION REPORT

Credit Education

Highlights of the Consumer Education Area:

- To date, the Consumer Education staff has exceeded our "face-to-face" goal of 250. This quarter we have taught 123 attendees for a total of 297 citizens reached by the Office of Consumer Credit Commissioner (OCCC) to offer instruction and raise financial awareness.
- Facilitated Junior Achievement (JA In A Day) classes during financial fitness week. Financial Fitness Awareness Week was April 23-27, 2012. This is an annual event presented by Financial Fitness Greater Austin to promote the importance of financial literacy via classes, fairs, and essay contest (open to teenagers and adults) that helps consumers recognize the importance of budgeting and/or paying for college.
- The OCCC has coordinated with Skills 4 Living program staff in Houston, Texas to participate as volunteers/consultants in their Game of Real Life events in June and July. The first OCCC visit will be June 14-15, 2012. The on-going program schedule is yet to be determined.

Accounting

The Accounting Department sought and received approval of its Agency Enterprise Resource Planning Project Request from the Comptroller of Public Accounts as required by §2101.037(a) of the Government Code to implement a new accounting system and convert from an internal USAS user to an external reporting user. The implementation date for the system is set for September 1, 2012, the beginning of FY '13. The department is currently working on the FY '13-'14 budget. Christina Cuellar is attending the required Investment Officer training on June 4-5.

Human Resources

Since the last Finance Commission meeting in April 2012, the OCCC filled three positions:

- Manager, Consumer Assistance (FE IV)
- Financial Examiner I, (Dallas Region)
- Administrative Assistant II

Mr. Alfredo Hernandez was selected to fill the position of Manager, Consumer Assistance as of July 1, 2012. His selection represents an internal advancement opportunity and promotion. Mr. Hernandez will

begin training for and transitioning to his new position during the month of June; his experience as a field examiner will contribute to the services and programs offered by the Consumer Assistance Department.

An examiner position for the Dallas region became available as the result of a pending retirement. This position has been held by Ms. Patricia Wiler, who has been with the agency since December 1997. Ms. Wiler has retired from state service effective May 31, 2012.

Positions Filled: Apr & May 2012	Candidate	Effective Date
Administrative Assistant II (Examination & Supervision)	Jessica Towns	April 26, 2012
Manager, Consumer Assistance (FE IV)	Alfredo Hernandez <i>Internal Advancement</i>	July 1, 2012
Financial Examiner I (Dallas Region)	Ilse Castañeda	June 1, 2012

Current Vacancies (as of 5/30/12)	Cause of Vacancy	Status
Investigator I (Consumer Assistance)	Internal Advancement/Promotion	Recruitment in Progress <i>Interviews to be scheduled</i>
Investigator I (Consumer Assistance)	Internal Advancement/Promotion	Recruitment in Progress <i>Interviews to be scheduled</i>
Financial Examiner I (Dallas Region)	Internal Advancement/Promotion	Recruitment in Progress <i>2nd Interviews scheduled</i>
License & Permit Specialist II	Termination	Recruitment in Progress <i>Job posting closed 5/25/12</i>

Stakeholder Communication

The OCCC has continued marketing efforts focused on effective and informative communication with stakeholders and community organizations relating to Crafted Precious Metal Dealers (CPMD) registration requirements. To supplement previous communications with local law enforcement, the agency has distributed informational material to Better Business Bureau's (BBBs) and Chambers of Commerce located throughout the state. The information provided focused on increasing awareness of the registration requirements and in providing consumer assistance contact information should these entities receive inquiries, concerns, or complaints. The agency has communicated with a small number of BBBs since the mailing and has provided additional information regarding registration requirement and public records access.

Members from the Examination and Supervision Department participated in several seminars and workshops throughout the last two months to include the Texas Department of Motor Vehicles Dealer

Training in Fort Worth and the Fort Worth Independent Auto Dealer Association conference. The agency is scheduled to participate in the Houston Independent Auto Dealer Association conference in early June.

The OCCC will participate in a meet-and-greet session with the Texas Organization of Financial Service Centers (TOFSC) on June 4, 2012. The TOFSC is a newly formed trade association representing diverse financial service providers, with a focus on credit access business compliance. The OCCC welcomes to the opportunity to develop additional opportunities for stakeholder outreach.

The agency has been actively engaged in activities associated with the Property Tax Lending Study. Data collection for this study has been completed and compiled; a draft version of the study results was shared with industry stakeholders and comments were invited. The comment period for stakeholders will conclude on June 1, 2012.

Strategic Planning

The agency continues to move forward in its strategic planning process. Draft versions of the plan have been shared with the agency's designated Finance Commission member, Jonathan Newton, and agency stakeholders. Comments have been invited from stakeholders; the comment period will conclude on May 30, 2012. The agency will consider stakeholder comments and comments from Mr. Newton and will integrate comments into the plan as possible or appropriate. A draft copy of the plan will be provided to the Finance Commission on May 31, 2012.

Training

The OCCC will conduct a staff conference on June 21st and 22nd at the Pickle Center in Austin. Agency examiners will also participate in a training workshop in Austin on June 20th.

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Austin, Tx 78705
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512-936-7600
Fax: 512-936-7610
Consumer Helpline: 800-538-1579

MEMORANDUM

TO: Members, Finance Commission

FROM: Sealy Hutchings
General Counsel

DATE: May 29, 2012

SUBJECT: Legal Department Report

Enforcement Report

The Legal Department continues to work with the Examination department to evaluate written filings by motor vehicle dealers who have increased their documentary fee. Our agency also continues to encounter dealers who failed to provide the agency with the statutorily required notice. In these situations, the agency will generally offer the dealer the opportunity to bring itself back into compliance by either providing restitution to the retail buyers or paying an administrative penalty or some combination of both remedies.

The Legal Department issued over 100 preliminary reports to Regulated Loan Licensees who failed to timely file their 2011 Annual Report with this office by May 1, 2012. The agency will provide some additional time for these licensees to provide their annual reports, and will eventually initiate revocation proceedings against the licensees who effectively refuse to provide the statutorily required filing.

Review of Collateral Protection Insurance Products

Another company recently presented its collateral protection program to the Texas Department of Insurance (TDI) and the Office of Consumer Credit Commissioner (OCCC). Under the program, a creditor establishes a captive insurance company to provide protection for the creditor. Once the captive is established a master policy is issued and the captive will provide funds either over an internet money transfer mechanism (e.g., PayPal) or will ACH/wire the funds. The company contends that because the money is provided over the internet, the situs of the program will be in cyber-space and therefore outside the scope of TDI's regulation. Both TDI and the OCCC will continue to review the program for compliance with Texas law.

Review of Debt Cancellation Agreements

During the 2011 legislative session, the Texas Legislature passed HB 2931, which creates a new statutory framework for motor vehicle debt cancellation agreements. The new law requires agreements to be approved by the OCCC before they can be used in connection with retail installment contracts for the sale of motor vehicles in Texas. The new law also requires the OCCC to approve or deny forms within 45 days of the receipt of the submitted agreement. This process necessarily involves a substantial amount of detailed work by both the legal and examination departments. As of May 29, 2012, the OCCC approved 302 agreements.

Administrative Rule Report

The OCCC completed rule review and is submitting rule actions for adoption for two administrative rule chapters: 7 TAC, Part 5, Chapter 82, concerning administration, and 7 TAC, Part 1, Chapter 1, concerning consumer credit regulation. As a result of this rule review, the OCCC is proposing for publication amendments to 7 TAC, Part 1, Chapter 1 and 7 TAC, Part 5, Chapter 82 during this meeting. The agency is also proposing for adoption amendments to 7 TAC, Chapter 89, concerning Property Tax Lenders as a result of the rule review of Chapter 89.

The agency is also proposing for publication six rule actions: a new rule, 7 TAC §83.838, concerning loans with multiple advances; amendments to 7 TAC §83.3002, concerning Credit Access Businesses – branch applications; amendments to 7 TAC §84.804, concerning disclosures and contract provisions, 7 TAC §84.808, concerning model clauses, and §84.809 concerning permissible changes relating to motor vehicle retail installment sales contract provisions; amendments to 7 TAC Chapter 82, concerning administration; amendments to 7 TAC, §1.201, concerning consumer credit regulation; and amendments to 7 TAC §2.104 concerning Residential Mortgage Loan Originators applying licensure with the OCCC under the SAFE Act.

Performance Report

The following chart is an overview of enforcement actions completed by the OCCC for the last two fiscal years and the current fiscal year-to-date. These figures only reflect enforcement actions that have been fully resolved with a final order; actions that are still pending are not included in the table. Our data does not reflect the work done by this agency to successfully bring businesses into compliance before a final administrative action is necessary. This data also does not account for actions to deny applications of those who fail to show eligibility for a license or assistance provided to license applicants requiring additional documentation to complete their applications. Our agency completed 71 application denial actions in fiscal year 2011. Currently, we have completed 38 denial actions for fiscal year 2012. It is difficult to predict the level and type of cases that our department will pursue, as many variable factors impact how each enforcement matter will evolve. However, the following table provides a snapshot of completed enforcement actions during the listed time period.

Enforcement Actions Completed			
	FYTD 2012	FY 2011	FY 2010
Revocation / Suspension Actions			
Regulated Loan License	0	0	5
Pawnshop License	1	1	0
Pawnshop Employee License	0	0	0
Motor Vehicle License	1	2	1
Total Revocation / Suspension Actions	2	3	6
Other Actions			
Cease & Desist Regulated	0	0	0
Cease & Desist Pawn	0	0	0
Cease & Desist Pawn Employee	0	0	0
Cease & Desist Motor Vehicle	0	1	0
Cease & Desist 345	0	0	0
Cease & Desist Unlicensed	13	29	17
Administrative Penalty Regulated	0	74	105
Administrative Penalty Pawn	3	8	2
Administrative Penalty Pawn Employee	6	10	7
Administrative Penalty Motor Vehicle	49	33	29
Administrative Penalty Property Tax	9	13	0
Total Other Actions	80	168	160
Total Enforcement Actions Closed	82	171	166

Final Orders Rendered

The agency issued 18 final orders since our last report.

Administrative Injunctions Rendered

The agency rendered seven administrative injunctions since the date of our last report.

Administrative Hearings Held

There was one administrative hearing held since the date of our last report.

Administrative Hearings Dismissed

The agency dismissed 11 administrative hearings since the date of our last report.

Administrative Hearings Scheduled

The agency has six administrative hearings scheduled during the next 60 days.

Preliminary Reports on Administrative Penalties Rendered

The agency issued 124 preliminary reports since our last report.

Litigation

1. Civil Action No. A99CA198, *Today Publishing, Inc., Cash Today of the U.S.A., Inc., Nobel Craft and Junell Craft v. Crowder, et al.*, in the United States District Court for the Western District of Texas, Austin Division and Cause No. 99-03,673, *Today Publishing, Inc., Cash Today of Denton, Inc., Cash Today of Texas, Inc., and Cash Today of the USA, Inc. v. Leslie Pettijohn and the Office of the (sic) Consumer Credit Commissioner*, in Travis County District Court. Both of these cases have been settled and final orders have been entered. The state court action remains on the agenda pending performance on the settlement.

Interpretation Requests

The OCCC received a request for an official interpretation from Winstead, P.C. The request centers on whether a contemplated unsecured consumer credit product is covered under TEX. FIN. CODE §342.455, which is entitled: "Agreement for More Than One Cash Advance." This interpretation request was withdrawn by the requestor.

Open Records Requests

Since the date of our last report, the agency has processed and responded to 50 requests for information under the Texas Public Information Act, with no referrals to the Attorney General.

Current Rule Actions

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Consumer Credit Regulation-Adopt Rule Review 7 TAC, Part 1, Chapter 1	Not applicable	Presented for Adoption 06/15/12
To adopt the completed review of Part 1, Chapter 1 under Texas Government Code, §2001.039		
Administration-Adopt Rule Review 7 TAC, Part 5, Chapter 82	Not applicable	Presented for Adoption 06/15/12
To adopt the completed review of Chapter 82 under Texas Government Code, §2001.039		
Property Tax Lenders-Adopt Amendments & New 7 TAC, Part 5, Chapter 89-Amendments to §§89.204 - 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.405 - 89.407, 89.409, 89.504, 89.602, and 89.701 - 89.702; and New §89.207 and §89.312	04/20/12	Presented for Adoption 06/15/12
To implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039; to implement streamlining improvements in the licensing process; to address issues discovered during the examination process; to improve consistency, grammar, punctuation, capitalization, and formatting; to provide clarification, more precise legal citations, and improved internal regulation references		
Consumer Credit Regulation-Proposed Amendments 7 TAC, Part 1, Chapter 1-§1.201, Interpretations and Advisory Letters	06/15/12	
To implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039; to provide clarification, improved grammar, plain language and better readability, and technical corrections; to update the rule to conform with current agency practice		
Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act-Proposed Amendments 7 TAC, Part 1, Chapter 2-§2.104, Concerning Application and Renewal Fees	06/15/12	
To clarify annual renewal fees and establish reinstatement fees for RMLO applicants seeking a license with the OCCC under the Texas SAFE Act		

Rule Item/Purpose	Proposal Date	Adoption Date/Status
<p>Administration-Proposed Amendments 7 TAC, Part 5, Chapter 82-§82.1, Concerning Custody of Criminal History Record Information; and §82.2, Concerning Public Information Requests; Charges</p> <p>To implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039; to update which agency employees and other authorized persons have access to criminal history record information; to conform the public information rule to the agency's current process, remove obsolete language, and add clarification; to make technical corrections</p>	06/15/12	
<p>Rules for Regulated Lenders-Proposed New 7 TAC, Part 5, Chapter 83, Subchapter A-§83.838, Loans with Multiple Advances</p> <p>To clarify which loans are subject to Texas Finance Code, §342.455</p>	06/15/12	
<p>Rules for Credit Access Businesses-Proposed Amendments 7 TAC, Part 5, Chapter 83, Subchapter B-§83.3002, Filing of New Application</p> <p>To provide a procedure for current licensees to add one or more locations (branches) after approval of their most recent license application</p>	06/15/12	
<p>Motor Vehicle Installment Sales-Proposed Amendments 7 TAC, Part 5, Chapter 84-§84.804, Concerning Disclosures and Contract Provisions Required by Texas Finance Code; §84.808, Concerning Model Clauses; and §84.809, Concerning Permissible Changes</p> <p>To provide clarification, update citations, and remove obsolete language relating to the model provisions for motor vehicle installment sales contracts</p>	06/15/12	

Upcoming Rule Action and April 2012 Adoptions

Rule Item/Purpose	Proposal Date	Adoption Date/Status
Motor Vehicle Installment Sales-Rule Review 7 TAC, Part 5, Chapter 84 OCCC anticipates changes to implement streamlining improvements in the licensing process; to improve consistency, grammar, punctuation, capitalization, and formatting; to provide clarification, more precise legal citations, and improved internal regulation references	August or October 2012	
Credit Access Businesses-Adopted Amendments 7 TAC, Part 5, Chapter 83-§83.6007, Consumer Disclosures Adopted amendments to clarify the rule's application to an existing business practice for payday and auto title loans transacted by credit access businesses via the Internet; to provide guidance to the industry as to when and how the consumer disclosures should be provided under this business model	02/17/12	04/20/12 Effective 05/10/2012
Property Tax Lenders-Adopted Rule Review 7 TAC, Part 5, Chapter 89 Adopted the completed review of Chapter 89 under Texas Government Code, §2001.039	Not applicable	04/20/12

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C. Office of Consumer Credit Commissioner

2. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 1, Concerning Consumer Credit Regulation.

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Part 1, Chapter 1. The notice of the review was published in the *Texas Register* as required on May 11, 2012 (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rule contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 1 presented separately in these materials.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 1 as the reasons for this rule continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 1 continue to exist and that the rule is repropose and readopted.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 1. Consumer Credit Regulation

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 1, Chapter 1, concerning Consumer Credit Regulation. Chapter 1 consists of Subchapter B, which contains §1.201, concerning Interpretations and Advisory Letters.

Notice of the review of 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* as required on May 11, 2012 (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rule contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 1 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 1, the commission finds that the reasons for initially adopting this rule continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 1, Chapter 1.

C. Office of Consumer Credit Commissioner

3. Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Chapter 82, Concerning Administration.

PURPOSE: Pursuant to Texas Government Code, §2001.039, the agency has completed the review of 7 TAC, Chapter 82. The notice of the review was published in the *Texas Register* as required on May 11, 2012 (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist. As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 82 presented separately in these materials.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve and adopt the rule review of Chapter 82 as the reasons for these rules continue to exist.

RECOMMENDED MOTION: I move that we find that the reasons for adopting Chapter 82 continue to exist and that the rules are repropose and readopted.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 82. Administration

The Finance Commission of Texas (commission) has completed the review of Texas Administrative Code, Title 7, Part 5, Chapter 82, concerning Administration. Chapter 82 consists of §82.1, concerning Custody of Criminal History Record Information; §82.2, concerning Public Information Requests; Charges; and §82.3, concerning Request for Criminal History Evaluation Letter.

Notice of the review of 7 TAC, Part 5, Chapter 82 was published in the *Texas Register* as required on May 11, 2012 (37 TexReg 3609). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of internal review by the agency, the commission has determined that certain revisions are appropriate and necessary. The commission is concurrently proposing amendments to 7 TAC, Chapter 82 published elsewhere in this issue of the *Texas Register*.

Subject to the proposed amendments to Chapter 82, the commission finds that the reasons for initially adopting these rules continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

This concludes the review of 7 TAC, Part 5, Chapter 82.

C. Office of Consumer Credit Commissioner

4. Discussion of and Possible Vote to Take Action on the Adoption of Amendments to and New Rules in 7 TAC, Part 5, Chapter 89, Concerning Property Tax Lenders, Resulting from Rule Review.

PURPOSE: In general, the purpose of the amendments and new rules regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise legal citations, and improved internal regulation references. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to and new rules in 7 TAC, Chapter 89 with changes as previously published in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve the amendments to and new rules in 7 TAC, Chapter 89.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 89. Property Tax Lenders
§§89.204 - 89.702

The Finance Commission of Texas (commission) adopts amendments to 7 TAC, Chapter 89, §§89.204 - 89.205, 89.301 - 89.304, 89.306 - 89.310, 89.405 - 89.407, 89.409, 89.504, 89.602, and 89.701 - 89.702, concerning Property Tax Lenders. The adopted amendments affect rules contained in Subchapter B, concerning Authorized Activities; Subchapter C, concerning Application Procedures; Subchapter D, concerning License; Subchapter E, concerning Disclosures; Subchapter F, concerning Costs and Fees, and Subchapter G, concerning Transfer of Tax Lien. The commission also adopts new §89.207, concerning Files and Records Required; and §89.312, concerning Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

The commission adopts the amendments to §§89.302, 89.303, 89.309, 89.405, 89.407, 89.504, and 89.602 with changes to the proposed text as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3314). The commission also adopts new §89.207 and §89.312 with changes to the proposed text as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3314). The commission adopts the amendments to §§89.204 - 89.205, 89.301, 89.304, 89.306 - 89.308, 89.310, 89.406, 89.409, 89.701, and 89.702 without changes to the proposed text as published in the May 4, 2012, issue of the *Texas Register* (37 TexReg 3314).

The commission received one written comment on the proposal from Texas RioGrande Legal Aid, Inc. The comment

primarily focuses on suggested clarification for new §89.207, Files and Records Required. The comment also recommends changes in terminology throughout the rules to provide consistency and reduce confusion.

Additionally, since the proposal, the agency has made further revisions to §89.207 as a result of informal comments received. The changes made as a result of the formal and informal comments are discussed after the purpose paragraphs for the provisions being amended.

The majority of the rules in Chapter 89 are being amended. Any Chapter 89 rule not included in this adoption will be maintained in its current form.

In general, the purpose of the amendments and new rules regarding 7 TAC, Chapter 89 is to implement changes resulting from the commission's review of Chapter 89 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 89 was published in the March 16, 2012, issue of the *Texas Register* (37 TexReg 1917). The agency did not receive any comments on the notice of intention to review. The agency circulated an early draft of the proposed changes to interested stakeholders and incorporated several changes suggested by stakeholders.

Most of the changes are technical in nature and relate to improvements in consistency, grammar, punctuation, capitalization, and formatting. Additional changes provide clarification, more precise

legal citations, and improved internal regulation references. These technical corrections have been modeled after improvements made during the rule review of Chapter 83, Subchapter A, Rules for Regulated Lenders, as the property tax lender statute and rules were both patterned after their regulated lender counterparts. There are, however, two new sections, existing sections with new substantive language, and some significant formatting amendments. The new language is generally intended to address issues discovered during the examination process. The major formatting changes serve to implement streamlining improvements in the licensing process similar to those used for the newly licensed credit access businesses.

The individual purposes of the amendments to each section or new rules are provided in the following paragraphs. Specific explanation is included with regard to new rules, new substantive language, substantive changes in language, and significant formatting amendments. The remaining changes throughout all sections consist of minor technical revisions and will be summarized more generally.

Concerning technical corrections in §89.204, the title of Texas Finance Code, Chapter 351, along with the short title and citation have been removed from §89.204(a). When Chapter 89 was first adopted, this language was needed in order to distinguish the chapter regarding property tax lenders from another chapter with an identical number. The legislature has since corrected the duplicate numbering and hence made this language unnecessary. Similar deletions of these references occur throughout the rules. In addition, technical corrections have been made in §89.204 to provide parallel formatting.

The title to §89.205 has been amended by adding the words "and Internet" after "Loans by Mail." This section currently contains subsection (c), which states: "a loan made, negotiated, arranged, or collected by or through the Internet is considered a 'loan by mail.'" The "Internet" reference in the title is intended to assist Internet lenders in locating this regulation with more ease. Additionally, §89.205 includes revisions related to parallel formatting and the removal of unnecessary Chapter 351 descriptors, as explained in the preceding paragraph.

Section 89.207, Files and Records Required, is a new rule outlining the recordkeeping requirements for property tax lenders. These records must be maintained and made available for examination in compliance with Texas Finance Code, §351.008. Adopted §89.207 includes language throughout allowing the use of paper or manual, electronic, optically imaged, or a combination of the preceding types of recordkeeping systems.

Paragraph (1) includes the following required records: a loan register, general business and accounting records, advertising records, adverse action records, and an official correspondence file. Paragraph (2) outlines the information that must be included in the record of an individual borrower's account. Paragraph (3) details the records that must be maintained for each individual property tax loan transaction file or be able to be produced within a reasonable amount of time. This paragraph includes files that must be maintained for all property tax loan transactions and the records associated with certain situations (e.g., residential property used for personal, family, or household use; loans delinquent for 90 consecutive days; loans where

separate disclosures are provided under federal or state law; loans involving foreclosure or attempted foreclosure).

Paragraph (4) of new §89.207 outlines the procedures for making corrective entries to the borrower's account record. Paragraph (5) provides for the maintenance of litigation and foreclosure records. Paragraph (6) requires property tax lenders to maintain a disaster recovery plan. Paragraph (7) describes the record retention period and required availability of records for examinations.

In §89.207(2)(K) regarding collection contact history, the agency would like to clarify that communications merely to obtain the status of payments sent or received do not fall within the scope of subparagraph (K)'s language. For example, if a customer calls and asks the licensee: "Did you receive my check yet?" The licensee may reply "yes" and would not be required to maintain a record of that contact.

In §89.207(3)(A)(i), the commenter states: "The Tax Code provisions referenced do not contain a requirement that a borrower sign a promissory note or loan agreement." Similarly, regarding §89.207(3)(A)(ii), the commenter continues by stating: "Texas Tax Code, §32.06 does not contain language relating to a deed of trust, contract, security deed, or other security instrument signed by a borrower."

In order to charge interest under Texas law, the parties need to execute a promissory note or agreement that contains a promise to pay. This document, however, may be contained in a combination note and deed of trust that may only have the label of "deed of trust."

Under Texas Finance Code, §302.002, if no rate is specified in a written contract, the interest is limited to an annual rate of 6%. Thus, in order for a property tax lender to charge up to 18% annually, the written document containing the promise to pay must have an interest rate specified. It is the agency's position that this document would be considered a promissory note or loan agreement, which as stated earlier, may legally be included in a security document.

Regarding the references to various security instruments in proposed §89.207(3)(A)(ii), Texas Tax Code, §32.06(c)(2) contemplates that the property owner and the transferee may enter "into a contract secured by a lien on the property." The contract referred to in subsection (c)(2) is in addition to the transfer document referenced in the other subsections of the statute.

However, the commission has revised the rule in a manner to place less focus on the labels of the documents while providing guidance on what type of documents must be maintained by the licensee. As a result, in §89.207(3)(A) concerning all property tax loan transactions, proposed clauses (i) and (ii) have been combined to provide better clarity. The revised provision begins with the new phrase of requiring "all lien transfer and security documents signed by the borrowers." Adopted §89.207(3)(A)(i) includes all of the documents referenced by the two proposed clauses while preserving the flexibility of licensees to only maintain the actual lien transfer and security documents signed by the borrowers for the particular transaction in question. Additionally, the remaining provisions of §89.207(3)(A) have been renumbered accordingly.

In adopted §89.207(3)(A)(ii), the beginning of the clause has been revised to require "the application for credit or transfer of the lien." The agency believes that this terminology better reflects different documents used by the industry.

In adopted §89.207(3)(A)(v) (proposed clause (vi)), the commenter states: "'Taxing authority' is an inaccurate term and should be replaced with 'collector' to more accurately reflect the language in §32.06(b), or 'tax-assessor collector' as that term is used in §89.702." Although the commission does not believe that "taxing authority" is an inaccurate term, the commission strives to be consistent in its regulations. Therefore, to maintain uniformity with §89.702, "taxing authority" has been replaced with "tax assessor-collector" in §89.207(3)(A)(v) for this adoption.

In §89.207(3)(B), the citation to Regulation Z has been updated to incorporate the recent renumbering of this regulation by the Consumer Federal Protection Bureau.

In §89.207(3)(H) concerning copies of collections letters or notices, the agency would like to clarify that this provision may be satisfied if the licensee is able to reproduce the exact record that was sent to the borrower. Subparagraph (H) is subject to the following language in paragraph (3): "If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request." Hence, these two provisions must be read together, allowing the licensee to re-create letters and notices by combining a form letter and the unique fields used to complete that letter for each borrower.

Due to informal comments received, the parenthetical proposed at the end of §89.207(3)(I) has been removed as it is not necessary.

Subparagraph (J) of §89.207(3) has experienced a number of changes since the proposal in response to informal comments received. At the end of clauses (i) and (ii) of §89.207(3)(J), the appropriate Texas Tax Code citation for judicial and non-judicial foreclosure have been added for clarity.

Regarding the notices under §89.207(3)(J)(i)(II) - (IV) (i.e., notice to cure, notice of intent to accelerate, and notice of acceleration), these notices are not required in a judicial foreclosure. There are situations in which a licensee will begin a foreclosure in the non-judicial setting and then have the need to switch to a judicial foreclosure later in the process. In other circumstances, licensees may choose to provide the notices in subclauses (II) - (IV) to the borrowers prior to a judicial foreclosure. The amended provisions allow a licensee to utilize this method of optional notice and then if sent, require that any such notices be maintained by the licensee. Thus, to better reflect the fact that these notices are not required in a judicial foreclosure, the word "required" has been replaced by term "specified" for this adoption. Also, the phrase "if sent by a non-salaried attorney of licensee, any" has been inserted at the beginning of each provision in order to clarify when documents for which a charge may be added to the account must be retained.

In §89.207(3)(J)(i)(IV) concerning records relating to the distribution of excess proceeds, the citations have been corrected to refer to Texas Tax Code, §34.02 and §34.04 in cases of judicial foreclosure.

Additionally, §34.04 has been added to clause (ii)(XII) regarding non-judicial foreclosures to provide a more complete legal reference.

The provision regarding notice to preexisting lienholders in a non-judicial foreclosure proposed in §89.207(3)(J)(ii)(IV) has been relocated to subclause (X) for this adoption. The agency believes that the new location provides a more logical order within the rule. The surrounding subclauses have been renumbered accordingly.

Also within §89.207(3)(J)(ii) concerning non-judicial foreclosure, the word "application" in subclause (V) has been changed to lowercase for this adoption to more accurately reflect the language used in Texas Rules of Civil Procedure, Rule 736.

The commenter also provides numerous suggested language changes related to replacing the terms "property tax lender," "licensed property tax lender," and "lender," with "licensee," "applicant," or "person," as appropriate. The commenter outlines the recommended changes as follows: "In §89.207(3)(H); §89.207(3)(J)(i)(I); §89.207(3)(J)(i)(VIII); §89.207(3)(J)(i)(XIV); §89.207(6); and §89.312, the term 'property tax lender' should be replaced with 'licensee.' The term 'licensee' is already used in existing rules and in proposed new rules. Using 'licensee' in the sections above will provide consistency in terminology and reduce potential confusion. In §89.302; §89.303(c); and, §89.309(a) the term 'property tax lender' should be deleted to provide consistency. In §89.405(c), the term 'property tax lender' should be replaced with 'applicant or licensee' for consistency. In §89.405(d)(2), the term 'property tax lender' should be replaced with 'person' for

contextual accuracy. Lastly, in §89.407(a), the terms 'lender' and 'licensed property tax lender' should be replaced with 'licensee' for consistency."

As noted earlier, the commission always strives for consistency and clarity in its rules. The commission agrees with the suggested terminology changes outlined in the preceding paragraph and has incorporated those changes for this adoption. In addition, parallel changes have been made to other rules to maintain this terminology throughout the chapter.

Section 89.301, which contains the licensing definitions, has experienced several minor revisions relating to grammar and punctuation. Two of these changes are recurring throughout the rules. First, the verb "shall" has been changed to "will" in the introductory paragraph and to "must" in paragraph (2)(E). Similar changes have been made to numerous rules in Chapter 89 by replacing "shall" with either "will" or "must," as appropriate, since the latter language is reflective of a more modern and plain language approach in regulations. Second, the hyphens have been removed from the phrases "privately held" and "publicly held," as these hyphens are deemed unnecessary by modern usage guides. This section also includes the removal of unnecessary Chapter 351 descriptors and corrections to business terminology.

Section 89.302 regarding the filing of new applications has been revised and reorganized to increase the efficiency of the licensing process and to better align the rules with the streamlined application forms prepared by the agency. First, the provisions that have been relocated to provide proper alignment with the revised licensing forms

are as follows: §89.302(1)(D) concerning statutory or registered agent has been relocated to adopted paragraph (1)(A)(iii), paragraph (1)(B) concerning owners and principal parties has been relocated to adopted (1)(A)(iv), paragraph (2)(C)(vii)(II) concerning statement of records has been relocated to adopted paragraph (1)(D)(iii), paragraph (1)(A)(iii) concerning authorized signatures has been renamed "Consent form" and relocated to adopted paragraph (1)(E), paragraph (1)(J) concerning financial statements has been relocated to adopted paragraph (2)(D), and paragraph (1)(K) concerning assumed names has been relocated to paragraph (2)(E).

In particular, one of the relocated provisions relates to the creation of a new separate licensing form, which is the consent form. This provision involves some minor wording changes in addition to its relocation. In §89.302(1)(F), the following new language relating to the term "authorized individual" has been added: "Each applicant must submit a consent form signed by an authorized individual. . . . The following are authorized individuals"

Second, the wording and format of several taglines or form titles have been revised to correspond with the new licensing forms. These title changes are found in the following adopted provisions: §89.302(1)(A), (1)(A)(i), (1)(A)(iii) - (iv), (1)(B), (1)(C), (1)(C)(i) - (iii), (1)(D), (1)(D)(i) - (iii), (1)(E), (2)(D), and (2)(E). Other changes relating to form titles may be found in §89.308(a) and §89.309(a) and (b). Additionally, any surrounding provisions affected by the relocations have been renumbered or relettered as appropriate, along with other technical corrections.

In conjunction with the reorganization of §89.302, certain provisions have experienced revised language to improve clarity and flexibility. The amendments to §89.302(1)(A)(i) accommodate applicants (e.g., Internet businesses) that will not have a location in Texas. In §89.302(1)(A)(iii), the term "statutory agent" has been replaced with "registered agent" throughout this clause. Parallel changes have also been made to §89.302(2)(C)(ii) and (iv). In reference to agents who are natural persons, a "physical residential address" is no longer required and has been replaced with a requirement for "a different address than the licensed location address." In addition, for registered agents not matching those on file with the Texas Secretary of State, an applicant must only submit "a certification from the secretary of the company identifying the registered agent" as opposed to the current language requiring certified minutes of the appointment.

A revision reflected throughout §89.302 relates to the percentage of ownership that must be disclosed by various entities. In the current rule, some of these percentages were 5% whereas others were 10%. In evaluating the appropriate level of disclosure necessary for the agency to properly assess principal parties, the agency determined that 10% would achieve the needed information and provide more consistency for licensees. Consequently, 5% has been replaced with 10% in the following adopted provisions: §89.302(1)(A)(iv)(III)(-b-), (1)(A)(iv)(IV) and (1)(A)(iv)(V). A parallel change has also been made to §89.304, Change in Form or Proportionate Ownership, as found in subsection (c)(1).

In §89.302(1)(A)(iv)(III) concerning disclosure of partners for limited partnerships, the first sentence is

inconsistent with the requirements outlined in the related items. Accordingly, to clarify and resolve this issue, the first sentence has been revised as per *Texas Register* guidelines: "Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated."

Section 89.302(1)(C)(iii) concerning employment history has been revised by removing the phrase "with no gaps." As the rule still requires "a continuous 10-year [employment] history," the deleted language is not necessary.

Section 89.302(2)(A)(iv) relates to the fingerprints of individuals who have previously been licensed by the agency and who are principal parties of currently licensed entities. In response to an audit finding, the agency has clarified that while fingerprints are not generally required for these individuals, they may be required under certain circumstances. Fingerprints are not required if "fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation." Fingerprints may be requested in order to complete the agency's records.

Regarding the entity documents under §89.302(2)(C), several changes have been made in order to increase the efficiency of the licensing process. The provisions under former (2)(C)(ii)(II) and (III), and (2)(C)(iv)(II) and (III) had required that applicants provide copies of the relevant portions of bylaws, operating agreements, and minutes addressing the number and election of officers and directors. The agency recognizes that these documents are only necessary in limited situations. Thus,

these provisions have been shifted to the end of each respective clause and language has been added to reflect that such documents should only be provided upon request. The relocated provisions are adopted in §89.302(2)(C)(ii)(IV) and (V), and (2)(C)(iv)(IV) and (V).

To further streamline the licensing process, the former requirements in §89.302(2)(C)(ii)(IV)(-a-) and (2)(C)(iv)(IV)(-a-) have been deleted for this adoption. The current provisions required applicants to provide minutes electing the statutory agent. Upon review of the licensing process, the agency can streamline the process for verification of the registered agent by certification from the secretary of the company. Additionally, the verification of good standing may be obtained either directly from the Texas Comptroller of Public Accounts or upon request to the licensee if the Comptroller does not have an online record of the company. Thus, the phrase "if requested" has been added to adopted §89.302(2)(C)(ii)(VI) and (2)(C)(iv)(VI).

Concerning the required financial statements in §89.302(2)(D), the number of days has been changed from 60 to 90, resulting in the first sentence reading as follows: "The financial statement must be dated no earlier than 90 days prior to the date of application." This revision better aligns with the quarterly reports that many applicants have readily available.

Another clarifying change concerning financial statements has been made to §89.302(2)(D). Although the types of financial statements vary by business entity, all submitted statements must comply with generally accepted accounting principles (GAAP). Complying with GAAP helps to

demonstrate the applicant's budgetary integrity, which is important to the agency's determination that the applicant's financial responsibility, experience, character, and general fitness are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. Thus, language concerning GAAP compliance has been relocated to the "all entity types" provision.

Updates have been made to §89.302(2)(E) to include revised citations to the Texas Business and Commerce Code provisions concerning assumed name certificates, as relocated during the 2009 legislative session. Additionally, corrections to business terminology have been made and unnecessary language has been removed throughout §89.302(D) and (E).

Technical corrections have been made to §89.303, Transfer of License, and to §89.306, Reportable Actions After Application. In particular, these changes provide parallel formatting and improve grammar, punctuation, and internal references.

Changes have been made to §89.304 and §89.306 to minimize unnecessary transfer applications and provide additional time for licensees to notify the agency of certain actions. In cases involving changes in organizational form and mergers resulting in different parent entities, the former language in §89.304(a) and (b) requiring a transfer has been revised to instead only require a license amendment and payment of the accompanying fee under §89.310. Similarly, a license amendment and fee requirement have been added to §89.304(c) when a change in proportionate ownership results in the exact same owners still owning the business (absent an owner crossing the

10% ownership threshold). In addition, throughout §89.304 and §89.306, the deadline for notifying the agency has been extended to 14 days rather than the former 10 days after the date of the event.

Section 89.307 describes how an application for a property tax lender license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. Subsection (a) has been revised for this adoption to clarify when a response will be provided by the agency, as follows: "A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that the application is incomplete and specifying the information required for acceptance." In addition, technical corrections to improve grammar and citations have been made to §89.307.

Section 89.309, relating to License Status includes technical amendments to improve clarity and grammar. Clarification has been added with regard to license expiration in §89.309(d) in order to better track the statutory provisions found in Texas Finance Code, §351.155.

Changes have been made to other sections requiring that a license amendment be filed in certain situations. Accordingly, these situations have been added to the fee provision concerning license amendments. Thus, §89.310(d) has been amended with the following phrases added before "or relocating an office": "changing the organizational form or proportionate ownership, providing notification of a new parent entity." In subsection (g), the phrase "not to exceed" has been added so that annual fees may be discounted when appropriate. Additionally, technical

corrections to §89.310 include changes to improve punctuation and grammar and to remove unnecessary Chapter 351 descriptors.

Adopted new §89.312 outlines the requirement that a property tax lenders' employees who operate as residential mortgage loan originators with respect to property tax loans must obtain a license through the Nationwide Mortgage Licensing System and Registry.

The following sections contain technical corrections: §89.405, Effect of Criminal History Information on Applicants and Licensees; §89.406, Crimes Directly Related to Fitness for License; Mitigating Factors; §89.407, Effect of Revocation, Suspension, or Surrender of License; §89.409, License Reissuance; and §89.602, Fee for Filing Release. Of note, the revisions remove unnecessary language, revise internal regulation references, provide more precise legal citations, provide parallel formatting, and improve grammar and punctuation.

Section 89.504 contains amendments that provide clarification and flexibility concerning the requirements for the disclosure statement that must be delivered to the property owner. In subsection (a)(6), language has been added referencing collection costs in order to better track the statute. In §89.504(c)(2)(A), the new option to deliver the disclosure statement by email with the borrower's consent increases flexibility for lenders and property owners. In addition, subparagraph (F) has been added to §89.504(d) to provide for verification of email delivery.

Sections 89.701 and 89.702 provide the standard forms used to transfer a tax lien.

An addition has been made to the permissible changes subsection of each rule in order to allow the title of both forms to be relocated to the top of the page. The amendments are intended to facilitate the electronic recording of these documents.

In §89.702, further flexibility is adopted with the addition of paragraph (3) to §89.702(b) regarding optional information. The new provision allows the following clarifying phrase to be added after the name of the county transferring the tax lien: "and all political subdivisions and districts for which it collects ad valorem taxes." This phrase parallels language used by the Comptroller and simplifies the listing of taxing units.

These amendments and new sections are adopted under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed as follows.

(1) Made or make [Make]--Loans are "made" by the office or offices where

either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or arranged; negotiate or arrange [~~Arranged; Negotiate or Arrange~~]-Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or collect [~~Collect~~]-Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) (No change.)

§89.205. Loans by Mail or Internet.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

(b) - (c) (No change.)

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system,

electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, in order to show compliance with Texas Finance Code, §341.403;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax

loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) all lien transfer and security documents signed by the borrowers, including any promissory note, loan agreement, deed of trust, contract, security deed, other security instrument, or other lien transfer document, executed in accordance with or under Texas Tax Code, §32.06 or §32.065, or Texas Finance Code, §351.002(2)(C);

(ii) the application for credit or transfer of the lien and any other written or recorded information used in evaluating the application;

(iii) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to

Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(iv) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(v) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the licensee from the tax assessor-collector;

(vi) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(vii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(viii) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or

household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §1026.23;

(C) If requested, copies of any payoff statements issued by the licensee or its agent as required by Texas Tax Code, §32.06(f-3) and §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed);

(D) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(E) If received by the licensee, a copy of the notice of delinquency to the licensee from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(F) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(G) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the licensee acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and §351.0021(a)(5);

(H) Copies of any collection letters or notices sent by the licensee or its agent to the borrower;

(I) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent;

(J) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures under Texas Tax Code, §32.06(c)(1):

(I) any records pertaining to a judicial foreclosure including records from the licensee's attorneys, the court, or the borrower or borrower's agent;

(II) if sent by a non-salaried attorney of the licensee, any notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) if sent by a non-salaried attorney of the licensee, any notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Tax Code, §32.06(c-

1)(1)(C) including verification of delivery of the notice;

(IV) if sent by a non-salaried attorney of the licensee, any notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as specified by Texas Tax Code, §32.06(c-1)(1)(C);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.02 and §34.04;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions involving non-judicial foreclosures under Texas Tax Code, §32.06(c)(2):

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code,

§51.002(d) including verification of delivery of the notice;

(II) the notice of intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice ;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(IV) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(V) the application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VI) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3; showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(VIII) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(IX) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(X) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure as required by Texas Tax Code, §32.06(c-1)(2);

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021 and §34.04;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the licensee, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(K) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

(5) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(6) Disaster recovery plan. A licensee must maintain a sufficient disaster recovery plan to ensure that property tax

loan transaction information is not destroyed, lost, or damaged.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 [~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220),~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to

the proposed lending business of the applicant. The following individuals are [~~considered to be~~] principal parties:

(A) - (B) (No change.)

(C) officers of privately held [~~privately-held~~] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately held [~~privately-held~~] corporations;

(E) individuals associated with publicly held [~~publicly-held~~] corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held [~~privately-held~~]); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated must [~~shall~~] be responsible for assembling and providing the information required on behalf of the applicant and must [~~shall~~] sign the application for the applicant;

(F) voting members of a limited liability company [~~corporation~~];

(G) (No change.)

(H) individuals designated as [a] principal parties [~~party~~] where necessary

to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§89.302. Filing of New Application.

An application for issuance of a new ~~[property tax lender]~~ license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license ~~[Property Tax lender License]~~.

(i) Location information.

A physical street address must be listed for the applicant's proposed lending address, or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a [A] post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) (No change.)

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

~~[(iii) Signature(s).
Electronic signatures will be accepted in a manner approved by the commissioner.]~~

~~[(I) If the applicant is a proprietor, each owner must sign.]~~

~~[(II) If the applicant is a partnership, each general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

~~(iv) [(B) Disclosure of]
Owners and principal parties [Principal Parties].~~

(I) [(I)] Proprietorships.

The applicant must disclose who owns and who is responsible for operating the business. All community property interests [interest] must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(II) [(ii)] General

partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(III) [(iii)] Limited

partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.

(-a-) [(I)] General

partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(-b-) [(II)]

Limited partners. The applicant should provide a complete list of all limited partners owning 10% [5%] or more of the partnership.

(-c-) [(III)]

Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(IV) [(iv)]

Corporations. Each officer and director must be named. Each shareholder holding 10% [5%] or more of the voting stock must be named if the corporation is privately held [privately-held]. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.

(V) [(v)] Limited

liability companies. Each "manager," "officer," and "member" owning 10% [5%] or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% [5%] or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% [5%] or greater.

(VI) [(vi)] Trusts or

estates. Each trustee or executor, as appropriate, must be listed.

(VII) [(vii)] All entity

types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(B) Disclosure questions [~~(C)~~ Application Questionnaire]. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(C) Personal information. [~~(D)~~ Appointment of Statutory Agent and Consent to Service]. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.]

(i) [(E)] Personal affidavit [Affidavit]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(ii) [(F)] Personal questionnaire [Questionnaire]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except

question 1, is answered "yes," an explanation must be provided.

(iii) [(G)] Employment history [History]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, [with no gaps,] accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

(i) [(H)] Statement of experience [Experience]. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(ii) [(I)] Business operating plan [Operation-Plan]. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(1) [(J)] the source of customers;

(II) ~~[(ii)]~~ the purpose(s) of loans;

(III) ~~[(iii)]~~ the size of loans;

(IV) ~~[(iv)]~~ the source of working capital for planned operations;

(V) ~~[(v)]~~ whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(VI) ~~[(vi)]~~ if the applicant will only be arranging or negotiating loans for another lender or financing entity, the **licensee** ~~[lender]~~ must also provide:

(-a-) ~~[(A)]~~ a list of the lenders for whom the applicant will be arranging or negotiating loans;

(-b-) ~~[(B)]~~ whether the loans will be collected at the location where the loans are made; and ~~[or]~~

(-c-) ~~[(C)]~~ if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(iii) Statement of records.
Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the

assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, each owner must sign.

(ii) If the applicant is a partnership, each general partner must sign.

(iii) If the applicant is a corporation, an authorized officer must sign.

(iv) If the applicant is a limited liability company, an authorized member or manager must sign.

(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

~~[(J) Financial Statement and Supporting Financial Information.]~~

~~[(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.]~~

~~[(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that~~

~~contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.]~~

~~[(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.]~~

~~[(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.]~~

~~[(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date.]~~

~~Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.]~~

~~[(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), as amended, an Assumed Name Certificate must be filed as provided in this subparagraph.]~~

~~[(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.02(7), as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.]~~

~~[(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.02(7), as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.]~~

~~(2) Other required filings.~~

~~(A) Fingerprints.~~

~~(i) (No change.)~~

(ii) For limited partnerships, if the owners and principal parties ~~[Disclosure of Owners and Principal Parties]~~ under paragraph (1)(A)(iv)(III)(-a-) ~~[(1)(B)(iii)(I)]~~ of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) (No change.)

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002~~[-as amended]~~.

(B) (No change.)

(C) Entity documents.

(i) (No change.)

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with ~~[articles of incorporation and]~~ any amendments;

~~[(H) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;]~~

(II) ~~[(H)]~~ a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or] a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form ~~[on the Disclosure of Owners and Principal Parties];~~

(III) ~~[(IV)]~~ if the registered ~~[statutory]~~ agent is not the same as the one on file ~~[registered agent filed]~~ with the Office of the Texas Secretary of State, [-]

~~[(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or]~~

~~[(b)]~~ a certification from the secretary of the corporation identifying the registered ~~[statutory]~~ agent; ~~[and]~~

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors

and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [(V)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [Publicly held] corporations. In addition to the items required for corporations, a publicly held [publicly held] must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) (No change.)

[(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;]

(II) [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or] a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties];

(III) [(IV)] if the registered [statutory] agent is not the same as the one on file [registered agent filed] with the Office of the Texas Secretary of State, [;]

[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]

[(b) a certification from the secretary of the company identifying the registered [statutory] agent; [and]

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [(V)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) - (vi) (No change.)

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide[;]

[(F)] a certificate of authority to do business in Texas, if applicable.[;and]

[(H) a statement of where records of Texas loan transactions will be kept. If these records will be

~~maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.]~~

(viii) (No change.)

(D) Financial statement and supporting financial information.

(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).

(ii) Sole proprietorships. Sole proprietors must complete all sections of the personal financial statement and the supporting financial information, or provide a personal financial statement that contains all of the same information requested by the personal financial statement and the supporting financial information. The personal financial statement and supporting financial information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information documents for the

partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(E) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code,

Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(F) ~~[(D)]~~ Bond. The commissioner may require a bond under Texas Finance Code, §351.102 [~~(Acts 2007, 80th Leg., ch. 1220),~~] when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner will ~~[shall]~~ give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~] as provided in paragraph ~~(2)(D)~~ ~~[(1)(F)]~~ of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a personal affidavit, personal questionnaire, and employment

history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§89.303. Transfer of License

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) - (3) (No change.)

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held [~~privately-held~~] corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held [~~privately-held~~] corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held [~~privately-held~~] corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held [~~publicly-held~~] corporation;

(5) any change in the membership interest of a licensed limited liability company;

(A) - (B) (No change.)

(C) in which a purchase or acquisition of control of 51% or more of any company that [which] is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection [~~subsection (a)(1) - (6) of this section~~], and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) (No change.)

(c) Filing requirements. An application for transfer of a ~~[property tax lender]~~ license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax Lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~], as provided in [~~paragraph (1)(J)~~] of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license [~~Application for Property Tax Lender License~~] for the transfer event must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (e)(2) of this section~~] must also be submitted.

(2) (No change.)

(d) Permission to operate. No business under the license may ~~[shall]~~ be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement must ~~[shall]~~ set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) (No change.)

§89.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 14 ~~[10]~~ calendar days by filing a license amendment and paying the required fees ~~[the appropriate transfer application~~

~~documents]~~ as provided in §89.310 ~~[§89.303]~~ of this title (relating to Fees ~~[Transfer of License]~~). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title (relating to Transfer of License). If the [A] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310 ~~[requires a transfer application pursuant to §89.303]~~. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 ~~[10]~~ calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% ~~[5%]~~ or greater. No later than 14 ~~[10]~~ calendar days following the actual change, the licensee is required to notify the commissioner in

writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held [~~publicly-held~~] corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held [~~publicly-held~~] parent corporation, although a transfer application may be required under §89.303 of this title.

(2) (No change.)

§89.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and that [~~which~~] relates to the qualifications for license, must be reported within 14 [~~10~~] calendar days after the person has knowledge of the action, fact or information.

§89.307. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that [~~the application is complete and accepted for filing or stating that~~] the application is incomplete and specifying the information required for acceptance.

(b) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will [~~shall~~] be conducted pursuant to the Administrative Procedure Act, Texas Government Code,

Chapter 2001, and Chapter 9 [~~§9.1 et seq.~~] of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will [~~shall~~] be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) will [~~shall~~] be forfeited.

(f) Processing time.

(1) (No change.)

(2) When a hearing is requested following an initial license application denial, the hearing will [~~shall~~] be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will [~~shall~~] be made after receipt of the proposal for decision from the administrative law judge.

(3) (No change.)

§89.308. Relocation of Licensed Offices.

(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment [~~filed on the Amendment to Property Tax Lender License~~]

or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice must ~~[shall]~~ waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must ~~[shall]~~ identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a **[property tax lender]** license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to Property Tax lender License]~~ or an approved electronic submission as prescribed by the commissioner. The notice

must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to Property Tax lender License]~~ or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been ~~[a fee is]~~ paid by the due date for license renewal. A licensee that pays the annual assessment fees ~~[fee]~~ will automatically be renewed even though a new license may not be issued.

§89.310. Fees.

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable ~~[non-refundable]~~ investigation fee is assessed each time an application for a new license is filed.

(2) (No change.)

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(b) License transfers. An applicant must pay a \$200 nonrefundable [~~non-refundable~~] investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable [~~non-refundable~~] fee as prescribed by the commissioner will be charged to recover the [~~to~~] costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating an office.

(e) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed [~~of~~] \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed [~~that is~~] \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 [(Aets 2007, 80th Leg., ch. 1220).] in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 [(Aets 2007, 80th Leg., ch. 1220)].

(2) - (3) (No change.)

§89.312. Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

As required by Texas Finance Code, §351.0515, a licensee's individual employees who, for actual or expected compensation or gain, act as residential mortgage loan originators in the making, transacting, or negotiating of a property tax loan for a principal dwelling, are required to obtain a license through the Nationwide Mortgage Licensing System and Registry.

§89.405. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character, and the information gathered is relevant to the

licensing or enforcement action decision as described in subsections (b) - (d) of this section [below].

(b) (No change.)

(c) Factors in determining whether conviction relates to occupation of applicant or licensee [~~property tax lender~~]. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [~~shall~~] consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) - (4) (No change.)

(d) Effect of criminal convictions [~~conviction~~] on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, [~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~]. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [below] are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license[;] or revoke an existing license, if a principal party of the

applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a person [~~property tax lender~~] that [~~who~~] originates or obtains loans [~~written~~] under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.406. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351[; ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~], involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes [~~a crime~~] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [~~a crime involving~~] failure to file a governmental report or filing a false report, or [~~a crime involving~~] the use or threat of force against another person are [~~is a crime~~] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [~~shall~~] consider, in addition to the factors listed in

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§89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [following] factors listed in paragraphs (1) - (6) of this subsection, as specified in Texas Occupations Code, §53.023:

(1) - (4) (No change.)

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party;[;] the sheriff or chief of police in the community where the principal party resides;[;] and other persons in contact with the convicted principal party.

§89.407. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a licensee [lender] and a borrower, except no interest may be charged or received by the licensee [lender] following the revocation, suspension, or surrender of its license. Alternatively, a licensee [lender] whose license is revoked or suspended may transfer or sell its accounts to a licensee [licensed property tax lender], which [who] may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter

351. [§351.001, et seq. (Acts 2007, 80th Leg., ch. 1220)].

(b) (No change.)

§89.409. License Reissuance.

In the event of reissuance of a license for any reason, the licensee must [shall] return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g., lost, destroyed).

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) - (5) (No change.)

(6) a statement that the property tax loan may include unpaid property taxes, penalties, [and] interest, and collection costs paid as shown on the tax receipt;

(7) - (16) (No change.)

(b) (No change.)

(c) Delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, a licensee [property tax lender] must deliver a

disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents ~~[available to the property owner]~~. Alternatively, licensees ~~[property tax lenders]~~ may deliver the disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

(B) - (C) (No change.)

(d) Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (c)(2) of this section.

(A) - (E) (No change.)

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §101(c) of the Electronic Signatures in Global and National Commerce Act will constitute a rebuttable presumption for sufficient delivery.

(e) (No change.)

§89.602. Fee for Filing Release.

(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a licensee ~~[property tax lender]~~ may charge ~~[a property owner]~~ the following for filing the release:

(1) - (3) (No change.)

(b) - (c) (No change.)

§89.701. Sworn Document Authorizing Transfer of Tax Lien.

(a) - (c) (No change.)

(d) Permissible changes.

(1) - (2) (No Change.)

(3) Title. The title of the sworn document may be relocated to the top of the form.

§89.702. Certified Statement of Transfer of Tax Lien.

(a) (No change.)

(b) Optional information. A tax assessor-collector may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(b). The tax assessor-collector may require that the following information be added to the certified statement:

(1) (No change.)

(2) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice;[-]

(3) after identifying the county/taxing unit(s) transferring a lien or liens as provided under subsection (a)(4) of this section, the following phrase: "and all political subdivisions and districts for which it collects ad valorem taxes."

(c) (No change.)

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(3), (4), (5), and (6) of this section may be provided in table or list format as an attachment to the standard form.

(2) Title. The title of the certified statement may be relocated to the top of the form.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner



TEXAS RIOGRANDE LEGAL AID, INC.

Austin Office
4920 N. I-35
Austin, TX 78751
Telephone (512) 374-2700 Toll Free (800) 369-9270
Fax (512) 447-3940

June 4, 2012

Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

Re: Comments to Chapter 89, Property Tax Lenders

Greetings:

I am writing on behalf of our client, Texas Housing Justice League. Pursuant to invitation published on May 4, 2012, *Texas Register* by the Office of Consumer Creditor (OCCC) please accept the following comments responsive to proposed amendments and new rules regarding Chapter 89, Property Tax Lenders.

Comments are provided in new rule §89.207(3)(A)(i), (ii), and (vi) regarding incorrect references to Texas Tax Code §32.06(e) and §32.06(e-1); Texas Tax Code §32.06; and the term "taxing authority."

In §89.207(3)(A)(i), the proposed language references *a promissory note or loan agreement signed by the borrower as required by Texas Tax Code, §32.06(e) and §32.06(e-1)*. The Tax Code provisions referenced do not contain a requirement that a borrower sign a promissory note or loan agreement.

In §89.207(3)(A)(ii), the proposed language references *the deed of trust, contract, security deed, or other security instrument signed by the borrowers, if any, as provided for by Texas Finance Code, §351.002(2)(C) and Texas Tax Code, § 32.06*. Texas Tax Code, § 32.06 does not contain language relating to a deed of trust, contract, security deed, or other security instrument signed by a borrower.

In §89.207(3)(A)(vi), the proposed language provides: *the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the property tax lender from the taxing authority*. "Taxing authority" is an inaccurate term and should be replaced with "collector" to more accurately reflect the language in §32.06(b), or "tax-assessor collector" as that term is used in §89.702.

Additional suggested language changes are in §89.207(3)(H); §89.207(3)(J)(i)(I); §89.207(3)(J)(i)(VIII); §89.207(3)(J)(i)(XIV); §89.207(6); §89.302; §89.303(c); §89.309(a); §89.312; §89.405(c); §89.405(d)(2); and, §89.407(a) regarding the use of the term "property tax lender," "licensed property tax lender" and "lender."

In §89.207(3)(H); §89.207(3)(J)(i)(I); §89.207(3)(J)(i)(VIII); §89.207(3)(J)(i)(XIV); §89.207(6); and, §89.312, the term "property tax lender" should be replaced with "licensee." The term "licensee" is already used in existing rules and in proposed new rules. Using "licensee" in the sections above will provide consistency in terminology and reduce potential confusion.

In §89.302; §89.303(c); and, §89.309(a) the term "property tax lender" should be deleted to provide consistency. In §89.405(c), the term "property tax lender" should be replaced with "applicant or licensee" for consistency. In §89.405(d)(2), the term "property tax lender" should be replaced with "person" for contextual accuracy. Lastly, in §89.407(a), the terms "lender" and "licensed property tax lender" should be replaced with "licensee" for consistency.

I can be reached at 512-374-2725 should you have any questions.

Sincerely,

TEXAS RIOGRANDE LEGAL AID, INC.

A handwritten signature in black ink that reads "Robert Doggett". The signature is written in a cursive, flowing style.

Robert W. Doggett
Attorney at Law

cc: client

Subchapter B. AUTHORIZED ACTIVITIES

7 TAC §§89.204, 89.205, 89.207

These amendments and new section are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §351.052(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed as follows.

(1) Made or make [~~Make~~]--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or arranged; negotiate or arrange [~~Arranged; Negotiate or Arrange~~]--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or collect [~~Collect~~]--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) (No change.)

§89.205. Loans by Mail or Internet.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §351.053(b) [~~(Acts 2007, 80th Leg., ch. 1220)~~] are to be construed according to the definitions contained in §89.204(a) of this title (relating to Multiple Licenses).

(b) - (c) (No change.)

§89.207. Files and Records Required.

Each licensee must maintain records with respect to each property tax loan made under Texas Finance Code, Chapter 351 and Texas Tax Code, §32.06 and §32.065, and make

those records available for examination under Texas Finance Code, §351.008. The records required by this section may be maintained by using either a paper or manual recordkeeping system, electronic recordkeeping system, optically imaged recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(1) Required records. A licensee must maintain the following items:

(A) A loan register, containing the date of the property tax loan, the last name of the borrower, the "total tax lien payment amount" as defined in §89.601 of this title (relating to Fees for Closing Costs), and the loan number;

(B) General business and accounting records, including receipts, documents, canceled checks, or other records for each disbursement made at the borrower's direction or request, or made on his behalf or for his benefit, including foreclosure or legal fees applied to the borrower's account;

(C) Advertising records, including examples of all written and electronic communications soliciting loans (including scripts of radio and television broadcasts, and reproductions of billboards and signs not at the licensed place of business) for a period of not less than one year from the date of use or until the next examination by OCCC staff, in order to show compliance with Texas Finance Code, §341.403;

(D) Adverse action records regarding all applications relating to Texas Finance Code, Chapter 351 property tax loans maintained for 25 months for consumer credit and 12 months for business credit; and

(E) An official correspondence file, including all communications from the OCCC, copies of correspondence and reports addressed to the OCCC, and examination reports issued by the OCCC.

(2) Record of individual borrower's account. A separate record must be maintained for the account of each borrower and the record must contain at least the following information on each loan:

(A) Loan number as recorded on loan register;

(B) Loan schedule and terms itemized to show:

(i) date of loan;

(ii) number of installments;

(iii) due date of installments;

(iv) amount of each installment; and

(v) maturity date;

(C) Name, address, and telephone number of borrower;

(D) Names and addresses of co-borrowers, if any;

(E) Legal description of real property;

(F) Principal amount;

(G) Total interest charges, including the scheduled base finance charge, points (i.e., prepaid finance charge), and per diem interest;

(H) Amount of official fees for recording, amending, or continuing a notice of security interest that are collected at the time the loan is made;

(I) Individual payment entries itemized to show:

(i) date payment received (dual postings are acceptable if date of posting is other than date of receipt);

(ii) actual amounts received for application to principal and interest; and

(iii) actual amounts paid for default, deferment, or other authorized charges;

(J) Any refunds of unearned charges that are required in the event a loan is prepaid in full, including records of final entries, and entries to substantiate that refunds due were paid to borrowers, with refund amounts itemized to show interest charges refunded, including the refund of any unearned points;

(K) Collection contact history, including a written or electronic record of each contact made by a licensee with the borrower or any other person and each contact made by the borrower with the licensee, in connection with amounts due, with each record including the date, method of contact, contacted party, person initiating the contact, and a summary of the contact.

(3) Property tax loan transaction file. A licensee must maintain a paper or imaged copy of a property tax loan transaction file for each individual property tax loan or be able to produce the same information within a reasonable amount of time. The property tax loan transaction file must contain documents that show the licensee's compliance with applicable law, including Texas Finance Code, Chapter 351; Texas Tax Code, §32.06 and §32.065, and any applicable state and federal statutes and regulations. If a substantially equivalent electronic record for any of the following documents exists, a paper copy of the record does not have to be included in the property tax loan transaction file if the

electronic record can be accessed upon request. The property tax loan transaction file must include copies of the following records or documents, unless otherwise specified:

(A) For all property tax loan transactions:

(i) the promissory note or loan agreement signed by the borrower as required by Texas Tax Code, §32.06(e) and §32.06(e-1);

Texas Tax Code, §32.06(e) and §32.06(e-1) do not reference a requirement that a borrower sign a promissory note or loan agreement.

(ii) the deed of trust, contract, security deed, or other security instrument signed by the borrowers, if any, as provided for by Texas Finance Code, §351.002(2)(C) and Texas Tax Code, §32.06;

Texas Tax Code, § 32.06 does not contain language relating to a deed of trust, contract, security deed, or other security instrument signed by a borrower.

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the disclosure statement to property owner as required by Texas Tax Code, §32.06(a-4)(1) and §89.504 of this title (relating to Requirements for Disclosure Statement to Property Owner) and §89.506 of this title (relating to Disclosures), including verification of delivery of the statement;

(v) the sworn document authorizing transfer of tax lien as required by Texas Tax Code, §32.06(a-1) and §89.701 of this title (relating to Sworn Document Authorizing Transfer of Tax Lien), including written documentation to support that the sworn document was sent by certified mail to any mortgage servicer and to each holder of a recorded first lien encumbering the property;

(vi) the certified statement of transfer of tax lien as required by Texas Tax Code, §32.06(b) and §89.702 of this title (relating to Certified Statement of Transfer of Tax Lien), including information verifying the date that the certified statement was received by the property tax lender from the taxing authority;

“Taxing authority” is an inaccurate term and should be replaced with “collector” to more accurately reflect the language in §32.06(b), or “tax-assessor collector” as that term is used in §89.702.

(vii) a final itemization of the actual fees, points, interest, costs, and charges that were charged at closing and to whom the charges were paid as specified by Texas Tax Code, §32.06(e);

(viii) if available, any tax certificate or other similar record used to determine the status of a tax account for the property subject to the tax lien as required by Texas Tax Code, §32.06(a-2) or authorization by property owner to pay the taxes;

(ix) copies of any other agreements or disclosures signed by the borrower applicable to the property tax loan;

(B) If the property is residential property owned and used by the property owner for personal, family, or household use, the right of rescission as specified by Texas Tax Code, §32.06(d-1) and Truth in Lending (Regulation Z), 12 C.F.R. §226.23;

(C) If requested, copies of any payoff statements issued by the property tax lender or its agent as required by Texas Tax Code, §32.06(f-3) and §89.603 of this title (relating to Fee for Payoff Statement or for Information on Current Balance Owed);

(D) If the property tax loan is delinquent for 90 consecutive days, a notice of delinquency as required by Texas Tax Code, §32.06(f) including evidence that the notice was sent by certified mail;

(E) If received by the property tax lender, a copy of the notice of delinquency to the property tax lender from the mortgage servicer or holder of the first lien as specified by Texas Tax Code, §32.06(f-1) and §89.505 (relating to Requirements for Notice of Delinquency to Transferee) and §89.506 of this title;

(F) If the property tax loan is paid off or otherwise satisfied, a copy of the release of lien as required by Texas Tax Code, §32.06(b);

(G) If fees are assessed, charged, or collected after closing, copies of the receipts, invoices, checks or other records substantiating the fees as authorized by Texas Finance Code, §351.0021 and Texas Tax Code, §32.06(e-1) including the following:

(i) if the property tax lender acquires collateral protection insurance, a copy of the insurance policy or certificate of insurance and the notice required by Texas Finance Code, §307.052; and

(ii) receipts or invoices along with proof of payment for attorney's fees assessed, charged, and collected under Texas Finance Code, §351.0021(a)(4) and §351.0021(a)(5);

(H) Copies of any collection letters or notices sent by the licensee property tax lender or its agent to the borrower;

(I) For a property tax loan where any separate disclosures or notices have been given, copies of the disclosures and notices sent (e.g., a copy of the Truth in Lending statement if the credit was not extended for commercial purposes; a copy of the notice to cosigner in a transaction involving a cosigner; a copy of the privacy notice);

(J) For property tax loan transactions involving a foreclosure or attempted foreclosure, the following records required by Texas Tax Code, Chapters 32 and 33:

(i) For transactions involving judicial foreclosures:

(I) any records pertaining to a judicial foreclosure under Texas Tax Code, §32.06(c)(1) including records from the licensee's ~~property tax lender's~~ attorneys, the court, or the borrower or borrower's agent;

(II) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(III) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(IV) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(VII) the foreclosure deed upon sale of the property;

(VIII) if the property is purchased at the foreclosure sale by the licensee ~~property tax lender~~, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(ii) For transactions involving non-judicial foreclosures:

(I) the notice to cure the default sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) and Texas Property Code, §51.002(d) including verification of delivery of the notice;

(II) the notice to intent to accelerate sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C) including verification of delivery of the notice;

(III) the notice of acceleration sent to the property owner and each holder of a recorded first lien on the property as required by Texas Tax Code, §32.06(c-1)(1)(C);

(IV) the notice provided to the recorded preexisting lienholder, at least, 60 days before the date of the proposed foreclosure as required by Texas Tax Code, §32.06(c-1)(2);

(V) any written documentation that confirms that the borrower has deferred their property tax on the property subject to the property tax loan as permitted under Texas Tax Code, §33.06, such as the Tax Deferral Affidavit for 65 or Over or Disabled Homeowner, Form 50-126 filed with the appraisal district, attorney, or court;

(VI) the Application for Order for Foreclosure under Texas Rules of Civil Procedure, Rule 736.1;

(VII) copies of any returns of citations issued under Texas Rules of Civil Procedure, Rule 736.3, showing the date and time the citation was placed in the custody of the U.S. Postal Service;

(VIII) copies of any responses filed contesting the Application for Order for Foreclosure as described in Texas Rules of Civil Procedure, Rule 736.5;

(IX) the motion and proposed order to obtain a default order, if any, under Texas Rules of Civil Procedure, Rule 736.7;

(X) the order granting or denying the application for foreclosure as specified under Texas Rules of Civil Procedure, Rule 736.8;

(XI) the notice of sale as required by Texas Property Code, §51.002(b) including verification of delivery of the notice;

(XII) records relating to the distribution of excess proceeds as required by Texas Tax Code, §34.021;

(XIII) the foreclosure deed upon sale of the property;

(XIV) if the property is purchased at the foreclosure sale by the licensee ~~property tax lender~~, copies of receipts or invoices substantiating any amounts reasonably spent by the purchaser in connection with the property as costs within the meaning of Texas Tax Code, §34.21(g);

(K) Any other documents necessary to establish the licensee's compliance with the law.

(4) Corrective entries to the borrower's account record, if justified, including the reason and supporting documentation for each corrective entry and any supporting documentation justifying the corrective entry, maintained under the following documentation guidelines:

(A) Dual recording in collection contact history permissible. The reason for the corrective entry may also be recorded in the collection contact history of the borrower's account record.

(B) Supporting documentation. The supporting documentation justifying the corrective entry may be maintained in the individual borrower's account file or properly stored and indexed in a licensee's optically imaged recordkeeping system.

(C) Manual recordkeeping systems. If a licensee manually maintains the borrower's account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual borrower's account record.

(5) Record of loans in litigation and foreclosure.

(A) An index of each foreclosure as it occurs and each legal action by or against the licensee as it is initiated must be recorded. The index must show the borrower's name, account number, and date of action.

(B) All loan records, correspondence, and any other information pertinent to the litigation or foreclosure must be maintained in the borrower's account folders or files.

(6) Disaster recovery plan. A licensee ~~property tax lender~~ must maintain a sufficient disaster recovery plan to ensure that property tax loan transaction information is not destroyed, lost, or damaged.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the property tax loan transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2012.

TRD-201201998

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Earliest possible date of adoption: June 3, 2012

For further information, please call: (512) 936-7621

Subchapter C. APPLICATION PROCEDURES

7 TAC §§89.301 - 89.304, 89.306 - 89.310, 89.312

These amendments and new section are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351[, ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220),~~] have the same meanings as defined in Chapter 351. The following words and terms, when used in this chapter, will [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are [~~considered to be~~] principal parties:

(A) - (B) (No change.)

(C) officers of privately held [~~privately held~~] corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 351;

(D) directors of privately held [~~privately held~~] corporations;

(E) individuals associated with publicly held ~~[publicly held]~~ corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held ~~[privately held]~~); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 351. One of the persons designated must ~~[shall]~~ be responsible for assembling and providing the information required on behalf of the applicant and must ~~[shall]~~ sign the application for the applicant;

(F) voting members of a limited liability company ~~[corporation]~~;

(G) (No change.)

(H) individuals designated as ~~[a]~~ principal parties ~~[party]~~ where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§89.302. Filing of New Application.

An application for issuance of a new ~~property tax lender~~ license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license ~~[Property Tax lender License]~~.

(i) Location information. A physical street address must be listed for the applicant's proposed lending address, or if the applicant will have no such location, a statement to that effect must be provided. For applicants with a proposed location in Texas, a [A] post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) (No change.)

(iii) Registered agent. The registered agent must be provided by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered

agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

~~[(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.]~~

~~[(I) If the applicant is a proprietor, each owner must sign.]~~

~~[(II) If the applicant is a partnership, each general partner must sign.]~~

~~[(III) If the applicant is a corporation, an authorized officer must sign.]~~

~~[(IV) If the applicant is a limited liability company, an authorized member or manager must sign.]~~

~~[(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.]~~

(iv) [(B)] [Disclosure of] Owners and principal parties [Principal Parties].

(I) [(i)] Proprietorships. The applicant must disclose who owns and who is responsible for operating the business. All community property interests [interest] must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(II) [(ii)] General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(III) [(iii)] Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.

(-a-) [(A)] General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

~~(-b-)~~ ~~(HH)~~ Limited partners. The applicant should provide a complete list of all limited partners owning 10% ~~[5%]~~ or more of the partnership.

~~(-c-)~~ ~~(HH)~~ Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

~~(IV)~~ ~~(iv)~~ Corporations. Each officer and director must be named. Each shareholder holding 10% ~~[5%]~~ or more of the voting stock must be named if the corporation is privately held ~~[privately held]~~. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% ~~[5%]~~ or greater.

~~(V)~~ ~~(v)~~ Limited liability companies. Each "manager," "officer," and "member" owning 10% ~~[5%]~~ or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% ~~[5%]~~ or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% ~~[5%]~~ or greater.

~~(VI)~~ ~~(vi)~~ Trusts or estates. Each trustee or executor, as appropriate, must be listed.

~~(VII)~~ ~~(vii)~~ All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

~~(B)~~ ~~(C)~~ Disclosure questions ~~[Application Questionnaire]~~. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

~~{(D) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Secretary of State, then the applicant must submit certified minutes appointing the new agent.}~~

(C) Personal information.

~~(i)~~ ~~(E)~~ Personal affidavit ~~[Affidavit]~~. Each individual meeting the definition of "principal party" as defined in §89.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(ii) [~~(F)~~] Personal questionnaire [~~Questionnaire~~]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(iii) [~~(G)~~] Employment history [~~History~~]. Each individual meeting the definition of "principal party" as defined in §89.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, [~~with no gaps,~~] accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

(i) [~~(H)~~] Statement of experience [~~Experience~~]. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(ii) [~~(I)~~] Business operating plan [~~Operation Plan~~]. Each applicant must provide a brief narrative explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(I) [~~(i)~~] the source of customers;

(II) [~~(ii)~~] the purpose(s) of loans;

(III) [~~(iii)~~] the size of loans;

(IV) [~~(iv)~~] the source of working capital for planned operations;

(V) [~~(v)~~] whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(VI) [~~(vi)~~] if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(-a-) [~~(i)~~] a list of the lenders for whom the applicant will be arranging or negotiating loans;

~~(-b-)~~ ~~[(H)]~~ whether the loans will be collected at the location where the loans are made; and ~~[or]~~

~~(-c-)~~ ~~[(H)]~~ if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, each owner must sign.

(ii) If the applicant is a partnership, each general partner must sign.

(iii) If the applicant is a corporation, an authorized officer must sign.

(iv) If the applicant is a limited liability company, an authorized member or manager must sign.

(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

[(J) Financial Statement and Supporting Financial Information.]

[(i) All entity types. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information. All financial statements must be certified as true, correct, and complete.]

[(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.]

[(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general

partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.]

~~[(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.]~~

~~[(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.]~~

~~[(K) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), as amended, an Assumed Name Certificate must be filed as provided in this subparagraph.]~~

~~[(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.02(7), as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.]~~

~~[(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.02(7), as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.]~~

(2) Other required filings.

(A) Fingerprints.

(i) (No change.)

(ii) For limited partnerships, if the owners and principal parties [Disclosure of Owners and Principal Parties] under paragraph (1)(A)(iv)(III)(-a-) [(1)(B)(iii)(1-)] of this section does not produce a natural person, the applicant must provide a complete set of legible

fingerprints for individuals who are associated with the general partner as principal parties.

(iii) (No change.)

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the OCCC, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002[,as amended-].

(B) (No change.)

(C) Entity documents.

(i) (No change.)

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with [articles of incorporation and-] any amendments;

~~{(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;}~~

~~(II) [(III)-] [a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or-] a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties-];~~

~~(III) [(IV)-] if the registered [statutory-] agent is not the same as the one on file [registered agent filed-] with the Office of the Texas Secretary of State , [÷]~~

~~{(a) a copy of the minutes of corporate meetings that record the election of the statutory agent; or}~~

[~~(b)~~] a certification from the secretary of the corporation identifying the registered [~~statutory~~] agent; [and]

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [~~(V)~~] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held [~~Publicly held~~] corporations. In addition to the items required for corporations, a publicly held [~~publicly held~~] must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) (No change.)

~~[(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;]~~

~~[(II) [~~(III)~~] [a copy of the minutes of company meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties; or] a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form [on the Disclosure of Owners and Principal Parties];~~

~~[(III) [~~(IV)~~] if the registered [~~statutory~~] agent is not the same as the one on file [~~registered agent filed~~] with the Office of the Texas Secretary of State . [~~÷~~]~~

~~[(a) a copy of the minutes of company meetings that record the election of the statutory agent; or]~~

[~~(b)~~] a certification from the secretary of the company identifying the registered [~~statutory~~] agent; [and]

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) [(X)] if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) - (vi) (No change.)

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide[÷]

[(H)] a certificate of authority to do business in Texas, if applicable .[÷ and]

~~{(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.}~~

(viii) (No change.)

(D) Financial statement and supporting financial information.

(i) All entity types. The financial statement must be dated no earlier than 90 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the supporting financial information. All financial statements must be certified as true, correct, and complete, and must comply with generally accepted accounting principles (GAAP).

(ii) Sole proprietorships. Sole proprietors must complete all sections of the personal financial statement and the supporting financial information, or provide a personal financial statement that contains all of the same information requested by the personal financial statement and the supporting financial information. The personal financial statement and supporting financial information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the supporting financial information must be submitted for the partnership itself and each general partner. All of the balance sheets and supporting financial information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the corporate or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet. The information requested in the supporting financial information must be submitted. The balance sheet and supporting financial information must be as of the same date. Financial statements are generally not required of related parties, but may be required if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(E) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71, as amended. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(F) [(D)] Bond. The commissioner may require a bond under Texas Finance Code, §351.102 [(Acts 2007, 80th Leg., ch. 1220),] when the commissioner finds that it would serve the public interest. When a bond is required, the commissioner will [shall] give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [Application for Property Tax Lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement] as provided in paragraph (2)(D) [(4)(F)] of this section. The person responsible for the day-to-day operations of the applicant's proposed new location must file a personal affidavit, personal questionnaire, and employment history [Personal Affidavit, Personal Questionnaire, and Employment History], if not previously filed. Other information required by this section need not be filed if the information on file with the OCCC is current and valid.

§89.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §89.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) - (3) (No change.)

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately held ~~[privately held]~~ corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held ~~[privately held]~~ corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately held ~~[privately held]~~ corporation; or

(D) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held ~~[publicly held]~~ corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) - (B) (No change.)

(C) in which a purchase or acquisition of control of 51% or more of any company that ~~[which]~~ is the parent or controlling member of a licensed limited liability company occurs;

(6) (No change.)

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of paragraphs (1) - (6) of this subsection ~~[subsection (a)(1) - (6) of this section]~~, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) (No change.)

(c) Filing requirements. An application for transfer of a ~~property tax lender~~ license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the transfer application, and the application for transfer must include the following:

(1) Required application information.

(A) New licensees filing transfers. The information required for new license applications under §89.302 of this title (relating to Filing of New Application) must be submitted by new licensees filing transfers. The instructions in §89.302 of this title are applicable to these filings. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (c)(2) of this section~~] must also be submitted.

(B) Existing licensees filing transfers. If the applicant is currently licensed and filing a transfer, the applicant must provide the information that is unique to the transfer event, including the application for license, disclosure questions, owners and principal parties, and a new financial statement [~~Application for Property Tax lender License, Application Questionnaire, Disclosure of Owners and Principal Parties, and a new Financial Statement~~], as provided in [~~paragraph (1)(J)~~] of §89.302 of this title. The instructions in §89.302 of this title are applicable to these filings. The person responsible for the day-to-day operations listed on the application for license [~~Application for Property Tax lender License~~] for the transfer event must file a personal affidavit, personal questionnaire, and employment history [~~Personal Affidavit, Personal Questionnaire, and Employment History~~], if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid. In addition, evidence of transfer of ownership as described in paragraph (2) of this subsection [~~subsection (c)(2) of this section~~] must also be submitted.

(2) (No change.)

(d) Permission to operate. No business under the license may [~~shall~~] be conducted by any license transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the license transferee the authority to operate under the transferor's license pending approval of the license transferee's new license application. The transferor must accept full responsibility to any customer and to the OCCC for the licensed business for any acts of the license transferee in connection with the operation of the lending business. The permission to operate must be submitted before the license transferee takes control of the licensed operation. The agreement must [~~shall~~] set a definite period of time for the license transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) (No change.)

§89.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the

licensee must advise the commissioner in writing of the change within 14 [~~40~~] calendar days by filing a license amendment and paying the required fees [~~the appropriate transfer application documents~~] as provided in §89.310 [~~§89.303~~] of this title (relating to Fees [~~Transfer of License~~]). In addition, the licensee must submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §89.303 of this title (relating to Transfer of License). If the [~~A~~] merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity, the licensee must advise the commissioner of the change in writing within 14 calendar days after the change, by filing a license amendment and paying the required fees as provided in §89.310 [~~requires a transfer application pursuant to §89.303~~] of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 14 [~~40~~] calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 10% [~~5%~~] or greater. No later than 14 [~~40~~] calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership by filing a license amendment and paying the required fees as provided in §89.310 of this title. This subsection does not apply to a publicly held [~~publicly held~~] corporation that has filed with the OCCC the most recent 10K or 10Q filing of the licensee or the publicly held [~~publicly held~~] parent corporation, although a transfer application may be required under §89.303 of this title.

(2) (No change.)

§89.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and that [~~which~~] relates to the qualifications for license, must be reported within 14 [~~40~~] calendar days after the person has knowledge of the action, fact or information.

§89.307. Processing of Application.

(a) Initial review. A response to an incomplete application will ordinarily be made within 14 calendar days of receipt stating that [~~the application is complete and accepted for~~]

~~filing or stating that~~] the application is incomplete and specifying the information required for acceptance.

(b) - (c) (No change.)

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing will ~~shall~~ be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and Chapter 9 ~~§9.1 et seq.~~ of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee will ~~shall~~ be refunded to the applicant. The investigation fee and the fingerprint processing fee in §89.310 of this title (relating to Fees) will ~~shall~~ be forfeited.

(f) Processing time.

(1) (No change.)

(2) When a hearing is requested following an initial license application denial, the hearing will ~~shall~~ be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application will ~~shall~~ be made after receipt of the proposal for decision from the administrative law judge.

(3) (No change.)

§89.308. Relocation of Licensed Offices.

(a) Notice to commissioner. A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be provided by filing a license amendment ~~filed on the Amendment to Property Tax Lender License~~ or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §89.310 of this title (relating to Fees).

(b) Notice to debtors. Written notice of a relocation of an office must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice must ~~shall~~ waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of

notices to debtors. Notices must ~~[shall]~~ identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

§89.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a ~~property-tax lender~~ license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to Property Tax lender License]~~ or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to Property Tax lender License]~~ or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been ~~[a fee is]~~ paid by the due date for license renewal. A licensee that pays the annual assessment fees ~~[fee]~~ will automatically be renewed even though a new license may not be issued.

§89.310. Fees.

(a) New licenses.

(1) Investigation fees. A \$200 nonrefundable ~~[non-refundable]~~ investigation fee is assessed each time an application for a new license is filed.

(2) (No change.)

(b) License transfers. An applicant must pay a \$200 nonrefundable [~~non-refundable~~] investigation fee for each license transfer.

(c) Fingerprint processing. A nonrefundable [~~non-refundable~~] fee as prescribed by the commissioner will be charged to recover the [~~to~~] costs of investigating each principal party's fingerprint record.

(d) License amendments. A fee of \$25 must be paid each time a licensee amends a license by inactivating a license, activating an inactive license, changing the assumed name of the licensee, changing the organizational form or proportionate ownership, providing notification of a new parent entity, or relocating an office.

(e) - (f) (No change.)

(g) Annual renewal and assessment fees.

(1) An annual assessment fee is required for each active license consisting of:

(A) a fixed fee not to exceed [~~of~~] \$600; and

(B) a volume fee based upon the lending activity conducted and the volume of business that consists of an amount not to exceed [~~that is~~] \$0.03 per each \$1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 351 [~~(Acts 2007, 80th Leg., ch. 1220);~~] in accordance with the most recent annual report filing required by Texas Finance Code, §351.164 [~~(Acts 2007, 80th Leg., ch. 1220)~~].

(2) - (3) (No change.)

§89.312. Property Tax Employee License Under Nationwide Mortgage Licensing System and Registry.

As required by Texas Finance Code, §351.0515, a licensee's property tax lender's individual employees who, for actual or expected compensation or gain, act as residential mortgage loan originators in the making, transacting, or negotiating of a property tax loan for a principal dwelling, are required to obtain a license through the Nationwide Mortgage Licensing System and Registry.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on April 20, 2012.

TRD-201201999

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621

Subchapter D. LICENSE

7 TAC §§89.405 - 89.407, 89.409

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.405. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party of an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party of an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies, or other criminal history information provided by the applicant or other sources, to issue a denial or initiate an enforcement action. Criminal history information relates to the OCCC's assessment of good moral character, and the information gathered is relevant to the licensing or enforcement action decision as described in subsections (b) - (d) of this section [~~below~~].

(b) (No change.)

(c) Factors in determining whether conviction relates to occupation of applicant or licensee ~~property tax lender~~. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner will [~~shall~~] consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) - (4) (No change.)

(d) Effect of criminal convictions [~~conviction~~] on applicant or licensee.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 351, [~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~]. For purposes of this section, the crimes listed in subparagraphs (A) - (H) of this paragraph [~~below~~] are considered to be crimes involving moral character:

(A) - (H) (No change.)

(2) Effect of other criminal convictions. The commissioner may deny an application for a license [~~;~~] or revoke an existing license , if a principal party of the applicant or licensee has been convicted of a crime that directly relates to the duties and responsibilities of a person ~~property tax lender that~~ [~~who~~] originates or obtains loans [~~written~~] under Texas Finance Code, Chapter 351. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §89.406 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§89.406. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 351 [~~;~~ ~~Property Tax Lenders, known as the "Property Tax Lender License Act" (Acts 2007, 80th Leg., ch. 1220)~~], involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, crimes [~~a crime~~] involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, [~~a crime involving~~] failure to file a governmental report or filing a false report, or [~~a crime involving~~] the use or threat of force against another person are [~~;~~ ~~is a crime~~] directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner will [~~shall~~] consider, in addition to the factors listed in §89.405 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the [~~following~~] factors listed in paragraphs (1) - (6) of this subsection , as specified in Texas Occupations Code, §53.023:

(1) - (4) (No change.)

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time was served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party ; ~~[,]~~ the sheriff or chief of police in the community where the principal party resides ; ~~[,]~~ and other persons in contact with the convicted principal party.

§89.407. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a licensee lender and a borrower, except no interest may be charged or received by the licensee lender following the revocation, suspension, or surrender of its license. Alternatively, a licensee lender whose license is revoked or suspended may transfer or sell its accounts to a licensee licensed property tax lender, which ~~[who]~~ may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, Chapter 351 ~~[§351.001, et seq. (Acts 2007, 80th Leg., ch. 1220)]~~.

(b) (No change.)

§89.409. License Reissuance.

In the event of reissuance of a license for any reason, the licensee must ~~[shall]~~ return to the OCCC the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the OCCC, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g. lost, destroyed).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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For further information, please call: (512) 936-7621

Subchapter E. DISCLOSURES

7 TAC §89.504

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.504. Requirements for Disclosure Statement to Property Owner.

(a) Required elements. A disclosure statement under Texas Tax Code, §32.06(a-4)(1) to be provided to a property owner before the execution of a tax lien transfer must contain the following required elements:

(1) - (5) (No change.)

(6) a statement that the property tax loan may include unpaid property taxes, penalties, [and] interest, and collection costs paid as shown on the tax receipt;

(7) - (16) (No change.)

(b) (No change.)

(c) Delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, a property tax lender must deliver a disclosure statement containing all of the elements outlined by subsection (a) of this section, as prescribed by Figure: 7 TAC §89.506(a) of this title, to the owner of the property.

(A) Method of delivery. The disclosure statement may be delivered by U.S. mail, with prepaid first-class postage, or via facsimile or email if the property owner consents [available to the property owner]. Alternatively, property tax lenders may deliver the

disclosure statement by certified mail with return receipt requested, by using a commercial delivery service with tracking abilities, or by using a courier service.

(B) - (C) (No change.)

(d) Verification of delivery.

(1) (No change.)

(2) No face-to-face interview. If there is no face-to-face interview, the property tax lender must deliver the disclosure statement to the property owner as prescribed in subsection (c)(2) of this section.

(A) - (E) (No change.)

(F) Verification of delivery by email. For disclosures delivered via email, a dated reply email indicating that the disclosure statement was successfully delivered to the property owner will constitute verification of delivery. Alternatively, a property owner's affirmative consent to electronic delivery of the disclosure in accordance with §101(c) of the Electronic Signatures in Global and National Commerce Act will constitute a rebuttable presumption for sufficient delivery.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Subchapter F. COSTS AND FEES

7 TAC §89.602

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.602.Fee for Filing Release.

(a) Allowable fee components. Under Texas Tax Code, §32.06(b), a property tax lender may charge [a property owner] the following for filing the release:

(1) - (3) (No change.)

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

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Subchapter G. TRANSFER OF TAX LIEN

7 TAC §89.701, §89.702

These amendments are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §351.007 grants the Finance Commission the authority to ensure compliance with the property tax lender chapter (Chapter 351) and Texas Tax Code, §32.06 and §32.065.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065.

§89.701. Sworn Document Authorizing Transfer of Tax Lien.

(a) - (c) (No change.)

(d) Permissible changes.

(1) - (2) (No change.)

(3) Title. The title of the sworn document may be relocated to the top of the form.

§89.702. Certified Statement of Transfer of Tax Lien.

(a) (No change.)

(b) Optional information. A tax assessor-collector may only include the optional information contained in this subsection or attach information as provided in subsection (d) of this section. Any other information included on or added to the standard form may invalidate the satisfaction of Texas Tax Code, §32.06(b). The tax assessor-collector may require that the following information be added to the certified statement:

(1) (No change.)

(2) a statement that the tax assessor-collector's certification of the amounts paid and that the transfer occurred does not constitute the rendering of legal advice ± [±]

(3) after identifying the county/taxing unit(s) transferring a lien or liens as provided under subsection (a)(4) of this section, the following phrase: "and all political subdivisions and districts for which it collects ad valorem taxes."

(c) (No change.)

(d) Permissible changes.

(1) Multiple account transfers. In the case of multiple account transfers, the information required by subsection (a)(3), (4), (5), and (6) of this section may be provided in table or list format as an attachment to the standard form.

(2) Title. The title of the certified statement may be relocated to the top of the form.

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C. Office of Consumer Credit Commissioner

5. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to 7 TAC §1.201, Concerning Interpretations and Advisory Letters.

PURPOSE: In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. Overall, the proposed changes provide clarification, improved grammar, plain language and better readability, and technical corrections. Revisions concerning the processing of interpretation requests and related fees have been updated to conform the rule with current agency practice.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §1.201 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §1.201.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 1. Consumer Credit Regulation

§1.201. Interpretations and Advisory Letters

The Finance Commission of Texas (commission) proposes amendments to §1.201, concerning Interpretations and Advisory Letters.

In general, the purpose of the amendments to §1.201 is to implement changes resulting from the commission's review of Chapter 1 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Part 1, Chapter 1 was published in the *Texas Register* on May 11, 2012 (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

Overall, the proposed changes provide clarification, improved grammar, plain language and better readability, and technical corrections. Revisions concerning the processing of interpretation requests and related fees have been updated to conform the rule with current agency practice. The individual purposes of the amendments to each subsection are provided in the following paragraphs.

In subsection (a) concerning definitions, the verb "shall" has been changed to "will" in the introductory paragraph, since the latter language is reflective of a more modern and plain language approach in regulations. The definition for "agency or OCCC" has been added to properly identify the Office of Consumer Credit Commissioner and allow the use of the agency's acronym when appropriate. Revisions have been made to clarify and streamline references to the Consumer Credit Commissioner. Additionally,

§1.201(a) contains other technical corrections, including the renumbering of existing definitions.

Subsection (b) outlines the information that must be submitted in a request for interpretation. Hence, this proposal replaces the current language of "Procedures for Finance Commission of Texas interpretations" with the following more accurate phrase: "Required information for interpretation request." In paragraph (4), the fee charged for an interpretation is proposed to be increased from \$300 to \$500. This fee has remained unchanged for almost 10 years. Thus, the increase is appropriate and necessary to compensate the agency for the expenses involved in researching and answering present day requests. In addition, paragraph (4) includes revisions clarifying that the agency will determine refunds and fee waivers.

Current paragraph (6) concerning "Processing time" has been renamed "Processing of request" and reorganized into proposed subsection (c). Section 1.201(c) has been subdivided into paragraphs (1) and (2) to reflect situations where the agency declines to issue an interpretation and where an interpretation may be presented to the commission for approval.

Current subsection (c) has been relettered as proposed subsection (d) and relates to OCCC advisory letters. The introductory phrase as proposed includes use of the agency's acronym and a parallel change of "shall" to "must." The quoted notation that must be included in every

PROPOSED AMENDMENTS

7 TAC §1.201

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advisory letter has been reformatted with initial capitalization as opposed to all letters being capitalized. Additionally, subsections (c) and (d) contain other clarifying and technical corrections.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §1.201 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §1.201 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which

authorizes the commission to propose rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Interpretations and Advisory Letters.

(a) Definitions. The following words and terms, when used in this section, will ~~[shall]~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of ~~[the]~~ Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph ~~(4)~~ ~~[(3)]~~ of this subsection.

(2) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

~~(3)~~ ~~[(2)]~~ Commissioner--The ~~[commissioner of the Office of]~~ Consumer Credit Commissioner of the State of Texas.

~~(4)~~ ~~[(3)]~~ Interpretation--A letter issued by the ~~[consumer—credit]~~ commissioner and approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of certain relevant facts provided by the requestor.

(b) Required information for interpretation request. ~~[Procedures for~~

PROPOSED AMENDMENTS

7 TAC §1.201

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~~Finance Commission of Texas~~
~~interpretations.]~~ Any person may submit a request for an interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting interpretation. An explicit statement that an interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. A concise description of the contemplated transaction or activity contemplated, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. A statement whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. A fee of \$500 [\$300] will be charged for an interpretation to compensate the agency for the expense involved in researching and answering the request. The payment of \$500 [\$300] should be submitted with the request. The agency [~~commission~~] may determine and remit a partial or full refund if deemed applicable. The agency [~~commission~~] may waive the fee.

(5) Additional information. A requestor should also identify each provision of law involved, and indicate the requestor's opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions, as well as, all prior interpretations to which the request relates.

~~(c) Processing of request. [(6) Processing time.]~~ Within 10 business days of receipt of a valid request pursuant to this subsection, the request will be filed with the Texas Register for publication. Upon publication in the Texas Register, any party may within 31 calendar days submit briefs or proposals pertaining to the request.

(1) Interpretation not issued. After publication of a valid request for interpretation, the agency may decline to issue an interpretation. A summary of the agency's reasons for deciding not to issue an interpretation will be published in the Texas Register.

(2) Approved interpretation. The agency may [~~will~~] draft an interpretation or a response and present it to the Finance Commission of Texas for consideration. Within 10 business days of approval of an interpretation by [~~an action of~~] the Finance Commission of Texas, a summary of the interpretation [~~or the response~~] will be filed with the Texas Register for publication. Copies of interpretations [~~or responses~~] shall contain a notation of approval and the date of action by the Finance Commission of Texas.

~~(d) [(e)]~~ OCCC [~~Office of Consumer Credit Commissioner~~] advisory letters. Each advisory letter issued by the OCCC must [~~shall~~] contain the following notation: "This advisory letter is not an interpretation approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108. [THIS ADVISORY LETTER IS NOT AN INTERPRETATION APPROVED BY THE FINANCE COMMISSION OF TEXAS PURSUANT TO TEXAS FINANCE CODE, §14.108.]" If an interpretation approved by the Finance Commission of Texas is desired, then an

interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code, §1.201(b)."

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

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C. Office of Consumer Credit Commissioner

6. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees Relating to Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act.

PURPOSE: The purpose of the amendments to §2.104 is to clarify annual renewal fees and establish reinstatement fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §2.104 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §2.104.

Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 2. Residential Mortgage Loan Originators

Applying for Licensure with the Office of Consumer Credit Commissioner

Under the Secure and Fair Enforcement for Mortgage Licensing Act

§2.104. Application and Renewal Fees

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §2.104, concerning Application and Renewal Fees for residential mortgage loan originators applying for licensure with the Office of Consumer Credit Commissioner (OCCC) under the Secure and Fair Enforcement for Mortgage Licensing Act.

In general, the purpose of the amendments to §2.104 is to clarify annual renewal fees and establish reinstatement fees for OCCC applicants under Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators (RMLOs), the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

Section 2.104 sets out the required application and renewal fees for OCCC applicants and licensees. These fees must be submitted to the Nationwide Mortgage Licensing System and Registry (NMLSR) and are nonrefundable. Subsection (a) includes a technical correction. In subsection (c), the proposed amendments clarify that the annual renewal fee is "not to exceed" \$300 and that such fees are due by December 31 of each year.

Proposed new subsection (d) outlines a reinstatement period and fee for RMLOs applying for a license with the OCCC. The agency conducted a review of the reinstatement procedures utilized by other states, as well as an analysis of the costs to the OCCC to perform reinstatement for Texas RMLOs. Subsection (d) sets a \$50 fee

for reinstatement and a yearly reinstatement period from January 1 through the last day of February. The agency believes that these reinstatement requirements provide the appropriate balance of reasonable fees and timeframe for licensees and the OCCC, allowing reinstatement of recently expired RMLOs.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of administering the amendments.

Commissioner Pettijohn has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of the proposed amendments will be a more efficient licensing process permitting recently expired RMLOs to reinstate their registration with the OCCC for a minimal fee up to two months after expiration.

Additional economic costs will be incurred by a person required to comply with this proposal. The reinstatement fee of \$50 outlined by proposed §2.104(d) constitutes the potential anticipated costs for applicants seeking to reinstate their expired licenses with the OCCC. Through a nationwide analysis, the agency believes that this reinstatement fee is reasonable and necessary to offer this process. However, as the annual renewal fee is currently set at \$300, the amendments merely clarify that

this fee is "not to exceed" \$300, providing a possible cost reduction to registrants.

Thus, aside from the \$50 reinstatement fee, the agency does not anticipate any other costs to or effects on persons who are required to comply with the amendments as proposed. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from the proposed amendments. But in order to obtain more complete information concerning the economic effect of the amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments are proposed under Texas Finance Code, §180.004, which authorizes the commission to implement rules necessary to comply with Chapter 180 and as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289). Additionally, the proposed amendments are also proposed under Texas

Finance Code, §180.061, which authorizes the commission to adopt rules establishing requirements as necessary for payment of fees to apply for or renew licenses through the NMLSR, and under Texas Finance Code, §14.107, which authorizes the commission by rule to set the fees for licensing and examination under Chapter 342, 347, 348, or 351 at amounts or rates necessary to recover the costs of administering those and other chapters.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 180, Residential Mortgage Loan Originators, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009, and Texas Finance Code, Chapters 342, 347, 348, and 351.

§2.104. Application and Renewal Fees.

(a) Required submission to NMLSR. To become an RMLO, an OCCC applicant must submit the required fees to the NMLSR. A fee is required to be submitted at the time of application and at the time of renewal. All fees are nonrefundable [non-refundable].

(b) Fingerprint processing fees. Fingerprint processing fees must also be paid in the amount necessary to recover the costs of investigating the OCCC applicant's fingerprint record (amount required by third party).

(c) OCCC application and renewal fees. The Finance Commission of Texas sets the RMLO application fee at \$300 and the RMLO annual renewal fee not to exceed [at] \$300 for applications filed with the OCCC. Annual renewal fees are due to the NMLSR by December 31 of each year. A third party operates the NMLSR and that third-party

operator sets the amount of the required system fees. Applicants and RMLOs must pay all required application and renewal fees, fingerprint processing fees, and any additional amounts required by the third-party operator.

(d) OCCC reinstatement period and fee.
The Finance Commission of Texas sets the RMLO reinstatement fee at \$50 for applications filed with the OCCC. The reinstatement period for OCCC applicants runs from January 1 through the last day of February each year.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

C. Office of Consumer Credit Commissioner

7. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to 7 TAC §82.1, Concerning Custody of Criminal History Record Information; and §82.2, Concerning Public Information Requests; Charges.

PURPOSE: In general, the purpose of the amendments to §82.1 and §82.2 is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The purpose of the amendments to §82.1 is to update which agency employees and other authorized persons have access to criminal history record information and to make technical corrections. The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §82.1 and §82.2 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §82.1 and §82.2.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 82. Administration
§82.1 and §82.2

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §82.1, concerning Custody of Criminal History Record Information, and §82.2, concerning Public Information Requests; Charges.

In general, the purpose of the amendments to §82.1 and §82.2 is to implement changes resulting from the commission's review of Chapter 82 under Texas Government Code, §2001.039. The notice of intention to review 7 TAC, Chapter 82 was published in the *Texas Register* on May 11, 2012 (37 TexReg 3609). The agency did not receive any comments on the notice of intention to review.

The individual purposes of the amendments to each rule are provided in the following paragraphs. The purpose of the amendments to §82.1 is to update which agency employees and other authorized persons have access to criminal history record information and to make technical corrections.

In both subsections of §82.1, the verb "shall" has been changed to "will," since the latter term is reflective of a more modern and plain language approach in regulations. Revisions have also been made throughout the section utilizing the agency's acronym ("OCCC") to provide more streamlined phrasing.

In §82.1(b), the list of agency employees and other authorized persons having access to criminal history record information has been updated to reflect current agency

practice. The following parties are proposed for addition to subsection (b): the director of consumer protection, the public information officer, and any other employee who requires access in order to fulfill the employee's duties.

The purpose of the amendments to §82.2 is to conform the rule to the agency's current public information process, remove obsolete language, and add clarification. Throughout §82.2, the verb "shall" has been changed to "will," providing parallel changes consistent with those made in §82.1.

In subsection (a) of §82.2 concerning definitions, the acronym "OCCC" has been added to the definition as an alternative for "agency" to allow the use of the agency's acronym when appropriate. Proposed new paragraph (3) contains the definition for "public information request" as a request pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). This definition also provides that the term "open records request" may be used synonymously with "public information request." Concerning the definition of "readily available information," the latter phrase concerning redaction time has been deleted and replaced with language clarifying that information located in separate buildings or remote storage as per Texas Government Code, §552.261 is not considered to be readily available.

Subsection (b) of §82.2 includes the more descriptive tagline of "Receipt of public information request." Language referencing other state and federal agencies

PROPOSED AMENDMENTS

§82.1 and §82.2

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has been removed, as those requests are usually handled as intergovernmental transfers of information. In the sentence concerning fee waivers and reductions, a reference has been added to Texas Government Code, §552.267, which authorizes these fee changes for requests made in the public interest. Additionally, the last phrase concerning no fee for requests of 50 pages or less has been revised and relocated to subsection (c).

Subsection (c) of §82.2 concerning copy and service charges has experienced several revisions and been reorganized to better reflect current agency practice and provide clarity for requestors of public information. The first two paragraphs have been recategorized into the most determinative factors affecting charges: (1) requests of 50 pages or fewer, and (2) requests of more than 50 pages. Requests under paragraph (1) have no fee, and those under paragraph (2) have charges of \$0.10 per page and \$15 per hour for administrative time. Obsolete charges for overhead and computer time not used by the agency are proposed for deletion.

Section 82.2(c)(3) has been revised to specifically relate to requests for not readily available information. The proposed changes include a citation to the provisions concerning remote storage in Texas Government Code, §552.261, language concerning the types of personnel time that may be charged for at \$15 per hour (e.g., driving to and from the storage location, retrieving and restoring information), and a citation to the Office of the Attorney General's (OAG) rule related to this issue. Further, all of the charges under this paragraph are optional, as this proposal replaces the verb "shall" with "may" in this instance.

Descriptive taglines have been added to paragraphs (4) - (6) to provide clarification. A new sentence has been added to §82.2(c)(4) concerning certification, stating that certified copies will bear the commissioner's signature and agency seal. Paragraph (5) contains a more precise citation to the OAG's public information cost rules chapter. Paragraph (6) concerning cost estimates has been subdivided into two subparagraphs: (A) for requests over \$40, and (B) for requests over \$100.

In subsection (d) regarding delivery charges, current paragraph (3) relating to delivery via fax is proposed for deletion as those charges are now obsolete and not used by the agency. Proposed §82.2(d)(3) contains new language concerning delivery via email and states that requests of more than 50 pages sent via email will not include copying charges, except for pages requiring redaction of confidential information.

Proposed §82.2(e) includes new paragraphs (2) and (3), which provide clarification relating to requests for inspection of 50 or more pages, and inspections costing over \$100.

The remaining changes to both §82.1 and §82.2 are technical and nonsubstantive in nature. Additionally, the third and final rule in Chapter 82, §82.3, concerning Request for Criminal History Evaluation Letter, does not contain any changes resulting from rule review.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §82.1 and §82.2 are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

PROPOSED AMENDMENTS

§82.1 and §82.2

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For each year of the first five years the amendments to §82.1 and §82.2 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will conform to current practice, will be more easily understood by persons required to comply with the rules, and will be more easily enforced.

In particular, the changes to §82.2, Public Information Requests; Charges, merely reflect the charges authorized by the Texas Public Information Act and the Office of the Attorney General. Otherwise, any changes in charges result in a reduction of costs to requestors. Thus, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro-businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to

enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner (OCCC) pursuant to Texas Finance Code, Chapter 14, Subchapter D, will [~~shall~~] be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the OCCC [~~consumer credit commissioner~~] or in determining the character and fitness of a current license holder of the OCCC [~~consumer credit commissioner~~]. All criminal history record information received by the OCCC [~~Office of Consumer Credit Commissioner~~] is confidential information and is for the exclusive use of the OCCC [~~Office of Consumer Credit Commissioner~~]. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.

(b) Access to criminal history record information maintained by the OCCC will

PROPOSED AMENDMENTS

§82.1 and §82.2

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~~[Office of Consumer Credit Commissioner shall]~~ be limited to the following persons:

(1) the Consumer Credit Commissioner ~~[consumer credit commissioner]~~;

(2) any assistant commissioner;

(3) any attorney employed by the OCCC [Office of Consumer Credit Commissioner] or an assistant attorney general representing the interest of the OCCC [Office of Consumer Credit Commissioner];

(4) employees of the licensing section; ~~[and]~~

(5) the director of consumer protection;

(6) the public information officer;

(7) ~~[(5)]~~ any person appointed to act on behalf of or in the stead of any of the above; ~~and~~ ~~[:]~~

(8) any permanent or temporary employee of the OCCC that requires access to criminal history record information in order to fulfill the employee's duties.

§82.2. Public Information Requests; Charges.

(a) Definitions. The following words and terms, when used in this section, will ~~[shall]~~ have the following meanings, unless the context clearly indicates otherwise.

(1) Agency or OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(2) Commissioner--The Consumer Credit Commissioner of the State of Texas [consumer credit commissioner].

(3) Public information request--A written request made for public information pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act). Another name for a "public information request" is an "open records request," and these terms may be used synonymously.

(4) ~~[(3)]~~ Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that is located in two or more separate buildings that are not physically connected with each other or information that is located in a remote storage facility as per Texas Government Code, §552.261 ~~[requires more than 30 minutes to prepare for release as a result of required redaction for the purpose of deleting information that is confidential by law].~~

(5) ~~[(4)]~~ Standard-size copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides will ~~[shall]~~ be counted as two copies.

(b) Receipt of public information request. ~~[The request.]~~ Upon receipt of a written request from a requesting party~~;~~ ~~including another state or federal agency;~~ which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency will ~~[shall]~~ make every reasonable

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§82.1 and §82.2

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effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities, on condition [provided] that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be treated equally. Fees imposed by this section may be waived or reduced at the discretion of the commissioner as per Texas Government Code, §552.267 [consumer credit commissioner provided that no fee will be charged for requests for 50 or less standard-size copies of readily available information].

(c) Copy and service charges.

(1) 50 pages or fewer. No fee will be charged for requests for 50 or fewer standard-size copies of public information. [A charge of \$.10 per page will be made for standard-size copies of readily available information].

(2) More than 50 pages. For standard-size copies of more than 50 pages of public [readily available] information, the following charges will apply: [a charge of]

(A) \$0.10 per page; and

(B) \$15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection [shall be added to the copy charges specified by paragraph (1) of this subsection. A charge of \$3.00 per hour for overhead may also be added to the charges].

(3) Not readily available information. For standard-size copies of information that is not readily available and that must be retrieved from a separate or remote storage location as per Texas

Government Code, §552.261, and regardless of number of pages, a charge of \$15 per hour of personnel time spent driving to and from the storage location or locating, retrieving, and restoring the information may [copying, redacting confidential information, and preparing the information for delivery or inspection shall] be added to the [copy] charges specified by [paragraph (1) of] this subsection as per 1 TAC §70.3. [A charge of \$3.00 per hour for overhead may also be added to the charges. If applicable, a charge of \$.50 per minute of computer time may also be added to the charges.]

(4) Certification. If certification of copies is requested, an additional charge of \$5 [~~\$5.00~~] per certification will be added to the computed fee. A certified copy will bear the signature of the commissioner and the OCCC seal.

(5) Non-standard-size copies. The cost for non-standard-size copies will [shall] be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, Chapter 70 [§§70.01–70.11, or as such rules may be amended].

(6) Cost estimates.

(A) Over \$40. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$40, the agency will send an estimate outlining the estimated cost to fulfill the request as per Texas Government Code, §552.2615.

(B) Over \$100. If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed \$100, the agency will

PROPOSED AMENDMENTS

§82.1 and §82.2

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send a cost estimate as provided in subparagraph (A) of this paragraph. In addition, the agency may require cash prepayment or bond equal to the total anticipated charges prior to providing copies [release] of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When copies are required to be sent by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly.

(3) Email. When copies of more than 50 pages are sent via email, the \$0.10 per page copying charge will not apply except for pages requiring redaction of confidential information.

~~[(3) Faxing. The charge for faxing copies is \$.10 per page. The agency may charge \$.50 per page for telephone delivery within the same area code, and \$1.00 per page for telephone delivery to a different area code. The agency may refuse to fax more than 20 pages of information and may require another form of delivery.]~~

(e) Inspection of records.

(1) Generally. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection

would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees will [shall] be provided.

(2) Redaction of confidential information and more than 50 pages. If confidential information must be redacted prior to a requestor's inspection and the request totals more than 50 pages, \$0.10 per page may be charged to prepare the inspection copies containing the remaining public information.

(3) Over \$100. If a request for inspection would result in charges of over \$100, the agency may require a 50% cash prepayment or a bond equal to the total anticipated charges prior to providing access to the requested information, as per Texas Government Code, §552.263 and 1 TAC §70.7.

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

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C. Office of Consumer Credit Commissioner

8. Discussion of and Possible Vote to Take Action on the Publication for Comment of New 7 TAC §83.838, Concerning Loans with Multiple Advances.

PURPOSE: The purpose of the proposed new rule is to clarify which loans are subject to Texas Finance Code, §342.455.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve proposed new 7 TAC §83.838 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment proposed new 7 TAC §83.838.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

§83.838. Loans with Multiple Advances

The Finance Commission of Texas (commission) proposes new §83.838 in Division 10, Subchapter A of 7 TAC, Chapter 83, concerning multiple-advance loans.

The purpose of the proposed new rule is to clarify which loans are subject to Texas Finance Code, §342.455. That section is titled "Agreement for More than One Loan or Cash Advance," and it provides interest limitations and disclosure requirements for agreements in which a lender makes multiple advances to a borrower. Subsection (b) of Section 342.455 states that the interest rate for a multiple-advance loan is limited to the Subchapter E rates, provided in Texas Finance Code, §342.201. Subsections (c) through (g) contain disclosure requirements, including the date of the agreement; any insurance charges; and the name, address, and signature of the borrower and lender.

Although Section 342.455 does not specifically identify which loans are exempt, the agency believes that the section should be interpreted as applying only when a subsequent advance increases a loan's principal balance after the original date of the loan. This interpretation is consistent with the statute's use of the phrase "from time to time," which suggests that the parties contemplate that the advances will be made at separate times.

Proposed new §83.838 defines a "multiple-advance loan" as a loan agreement subject to Texas Finance Code, Chapter 342, under which more than one loan or advance

may be made to a borrower from time to time. Subsection (b) provides that multiple-advance loans are subject to the requirements provided in Texas Finance Code, §342.455. Subsection (c) provides that a loan is not subject to Section 342.455 if all advances occur on the same date, or if all advances after the initial advance occur because of the borrower's default (e.g., collateral protection insurance fees, repossession fees, court costs).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the new rule is in effect there will be no fiscal implications for state or local government as a result of administering the rule.

Commissioner Pettijohn has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of the new rule will be increased clarity and certainty regarding the application of Texas Finance Code, §342.455.

There is no anticipated cost to persons who are required to comply with the rule as proposed. There will be no effect on individuals required to comply with the new rule as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of this new rule, the agency invites

comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed new rule may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed new rule is published in the *Texas Register*. At the conclusion of the 31st day after the proposed new rule is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

This new section is proposed under Texas Finance Code, §342.007, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Finance Code, Chapter 342.

The statutory provisions affected by the proposed new section are contained in Texas Finance Code, Chapter 342.

§83.838. Loans with Multiple Advances.

(a) Definition. In this section, "multiple-advance loan" means a loan agreement subject to Texas Finance Code, Chapter 342, under which more than one loan or advance may be made to a borrower from time to time.

(b) Requirements for multiple-advance loans. In connection with a multiple-advance loan, an authorized lender must comply with

the interest limitations, disclosure requirements, and other requirements provided in Texas Finance Code, §342.455.

(c) Loans not covered. The following loans are not subject to this section or to Texas Finance Code, §342.455:

(1) loans in which all advances occur on the same date; and

(2) loans in which all advances after the initial advance occur because of the borrower's default (e.g., collateral protection insurance fees, repossession fees, court costs).

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

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C. Office of Consumer Credit Commissioner

9. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to 7 TAC §83.3002, Concerning Filing of New Application Relating to Credit Access Businesses.

PURPOSE: The purpose of the amendments to §83.3002 is to provide a procedure for current licensees to add one or more locations (branches) after approval of their most recent license application.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §83.3002 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §83.3002.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter B. Rules for Credit Access Businesses

§83.3002. Filing of New Application

The Finance Commission of Texas (commission) proposes amendments to §83.3002, concerning Filing of New Application for credit access businesses.

The purpose of the amendments to §83.3002 is to provide a procedure for current licensees to add one or more locations (branches) after approval of their most recent license application. The amendments outline two timeframes: (1) applications received after 90 days from last license approval, and (2) applications received within 90 days from last license approval. The latter category affords a streamlined procedure where fewer documents are required.

The proposed amendments add new paragraph (3) to §83.3002 regarding subsequent applications for branch offices. Proposed subparagraph (A) states that if a currently licensed credit access business files an application for a new office after 90 days from its last license approval, the applicant must follow the standard new application process contained in the existing rule. However, if required information on file with the agency is current and valid, that information does not need to be resubmitted.

Proposed §83.3002(3)(B) details the simplified process for applicants wishing to add locations within 90 days from their last license approval. To utilize this provision, any action, fact, or other information cannot require a materially different answer than that given in the last license application. Applicants under subparagraph (B) must

provide the following four items: (1) a branch consent form signed by an authorized individual verifying that there have been no changes from the last application; (2) the location information and responsible person for each new branch; (3) the new application fees, with the exception of the investigation fee; and (4) if requested, a new financial statement. Additionally, the commissioner may require any other information necessary to process the branch application.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be a more efficient licensing process by allowing recently approved credit access businesses to add branch locations with the submission of minimal documents.

Additional economic costs will be incurred by a person required to comply with this proposal. The branch application fees referenced in proposed §83.3002(3)(B)(iii) and contained in current §83.3010(a) constitute the potential anticipated costs for applicants seeking to add one or more locations after their most recent license application. These fees are as follows: \$600 active license annual

PROPOSED AMENDMENTS

7 TAC §83.3002

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assessment fee per location, \$250 inactive license annual assessment fee per location, and \$200 endowment fund fee per location. The agency believes that these branch application fees are reasonable and necessary to offer this process. However, without the proposed amendments, regardless of time filed, all subsequent branch applicants may have been required to pay all new application fees. By providing the streamlined process for those applying within 90 days, such applicants receive a possible cost reduction.

Thus, aside from the branch application fees outlined in the preceding paragraph, the agency does not anticipate any other costs to or effects on persons who are required to comply with the amendments as proposed. The agency is not aware of any adverse economic effect on small or micro-businesses resulting from the proposed amendments. But in order to obtain more complete information concerning the economic effect of the amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no

further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §393.622, which authorizes the Finance Commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 393.

§83.3002. Filing of New Application.

An application for issuance of a new credit access business license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. Appropriate fees must be filed with the application and the application must include the following:

(1) - (2) (No change.)

(3) Subsequent applications for branch offices.

(A) Branch applications received after 90 days from last license approval. If the applicant is currently licensed and filing an application for a new office after 90 days from its last license approval, the applicant must submit a new application as provided by this section. Required information need not be resubmitted if the information on file with the OCCC is current and valid. All fees for new licenses required by subsection (a) of

§83.3010 of this title (relating to Fees) must be paid for each new branch location.

(B) Branch applications received within 90 days from last license approval. If the applicant is currently licensed and filing an application for a new office within 90 days from its last license approval, and no action, fact, or information has changed that would require a materially different answer than that given in the last license application, the applicant must provide the following information:

(i) the branch consent form verifying that there have been no changes from the last application, signed by an authorized individual as provided by paragraph (1)(E) of this section;

(ii) the location information and responsible person for each new branch location, as provided by paragraph (1)(A)(i) and (ii) of this section;

(iii) the fees required by subsection (a) of §83.3010 of this title must be paid for each new branch location, with the exception of the \$200 investigation fee;

(iv) if requested, a new financial statement as provided in paragraph (2)(C) of this section; and

(v) if requested, any other information required by the commissioner that may be necessary to process the branch application.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

C. Office of Consumer Credit Commissioner

10. Discussion of and Possible Vote to Take Action on the Publication for Comment of Amendments to 7 TAC §84.804, Concerning Disclosures and Contract Provisions Required by Texas Finance Code; §84.808, Concerning Model Clauses; and §84.809, Concerning Permissible Changes Relating to Motor Vehicle Retail Installment Sales Contract Provisions.

PURPOSE: These amendments govern the plain language contracts used by motor vehicle sales finance licensees under Texas Finance Code, Chapter 348. In general, the purpose of the amendments to §§84.804, 84.808, and 84.809 is to provide clarification, update citations, and remove obsolete language relating to the model provisions for motor vehicle installment sales contracts.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the proposed amendments to 7 TAC §84.804, §84.808, and §84.809 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the proposed amendments to 7 TAC §84.804, §84.808, and §84.809.

Title 7. Banking and Securities
Part 5. Office of Consumer Credit Commissioner
Chapter 84. Motor Vehicle Installment Sales
§§84.804, 84.808 and 84.809

The Finance Commission of Texas (commission) proposes amendments to 7 TAC §84.804, concerning Disclosures and Contract Provisions Required by Texas Finance Code; §84.808, concerning Model Clauses; and §84.809, concerning Permissible Changes.

These amendments govern the plain language contracts used by motor vehicle sales finance licensees under Texas Finance Code, Chapter 348. In general, the purpose of the amendments to §§84.804, 84.808, and 84.809 is to provide clarification, update citations, and remove obsolete language relating to the model provisions for motor vehicle installment sales contracts.

Two issues were brought the agency's attention by stakeholders. Other amendments relate to issues raised during the examination of Chapter 348 licensees. Additional changes provide technical corrections. In order to address all of the motor vehicle plain language issues at one time, the agency decided that presenting a separate rule action outside of the upcoming rule review would offer the most efficient means and most clarity to licensees needing to update their plain language contracts. The following paragraphs outline the purposes of the amendments for each particular affected provision.

In proposed §84.804(4)(E) concerning itemized charges not included in the cash price of a motor vehicle, the parenthetical at the end of subparagraph (E) has been deleted. During the course of Chapter 348 examinations, the phrase "one aggregate

amount" may have led some licensees to believe that the dealer's inventory tax and sales tax could be disclosed under one charge. The agency believes that the parenthetical at the end of §84.804(4)(E) is not necessary and should be removed to provide better clarity for licensees.

In proposed §84.808(9) concerning documentary fee, subparagraphs (C) - (E) have been deleted. These subparagraphs provided the documentary fee disclosures effective before August 2010 and were used as a transition in implementing 2009 legislative changes. Thus, §84.808(9)(C) - (E) contain obsolete language that is no longer necessary and are proposed for deletion.

An issue concerning the prohibition against oral modifications in Figure §84.808(15) and related integration language in §84.808(37) was brought to the agency's attention by a stakeholder. While the integration language in paragraph (37) could be interpreted to not allow supplemental written agreements or ancillary contracts agreed to by the parties, the prohibition against oral modifications in paragraph (15) did not explicitly connect these supplemental agreements to the retail installment sales contract.

Therefore, in order to harmonize these two provisions and achieve the goal of allowing supplemental written agreements or ancillary contracts to be incorporated into the retail installment sales contract, the following revisions are proposed. First, proposed Figure §84.808(15) would read as

PROPOSED AMENDMENTS
7 TAC §§84.804, 84.808, and 84.809
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follows: "Any change to this contract must be dated and in writing. Both you and I must sign it. The written change must reference this contract by date, account number, vehicle identification number (VIN), stock number, or by any other reasonable means to be considered part of this contract. No oral changes to this contract are enforceable." The proposed revisions add the words "dated and" to the first sentence, while maintaining the current second sentence. The third sentence is proposed new language providing clarification. And the fourth sentence remains unchanged.

Second, the integration language is proposed for deletion from §84.808(37), resulting in the remaining language relating only to severability. Hence, the proposed changes delete the portion of the title regarding integration, as well as the following first sentence: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle." The deletion of the previously quoted sentence would clarify that valid written amendments are permitted under §84.808(15). Then, the second sentence of paragraph (37) would be maintained as the severability clause: "If any part of this contract is not valid, all other parts stay valid."

In §84.808(16) concerning finance charge earnings methods, changes are proposed to clarify that the same contract rate disclosure should be provided in situations of a pure sales tax deferral as well as situations where credit life or credit accident and health insurance is required. These amendments are intended to address concerns that have arisen during the Chapter 348 examination process.

The proposed changes regarding sales tax deferral are contained in §84.808(16)(B)(ii) and (C)(ii). These parallel amendments do not revise the model disclosure, but rather subdivide each respective clause into two subclauses: "(I) Sales tax deferred without required credit life or credit accident and health insurance," and "(II) Sales tax deferred with required credit life or credit accident and health insurance," with the latter subclauses also including this additional sentence: "If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in subclause (I) of this clause must be provided."

Another change relating to finance charge earnings methods has been made in proposed §84.808(16)(C)(i). This third sales tax advance option is intended to provide an appropriate disclosure when a retail seller discloses the APR using a method other than the method used to compute the finance charge, as discovered during previous examinations.

This new calculation option is proposed in §84.808(16)(C)(i)(III), as follows: "If a retail seller discloses the annual percentage rate using a method other than the method that was used to compute the finance charge under the scheduled installment earnings method, the contract rate disclosure should read: 'The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the

Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the contract rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges."

Proposed §84.808(34)(G) regarding cancellation of optional insurance or service contracts has been amended to incorporate the inclusion of debt cancellation agreements. A stakeholder requested that the agency consider revising this provision to provide a more accurate model clause. The agency agrees with the stakeholder that debt cancellation language should be included in this provision.

Accordingly, the agency has proposed §84.808(34)(G) to read as follows: "Cancellation of optional insurance, debt cancellation agreement, and service contracts. The model clause regarding cancellation of optional insurance, debt cancellation agreement, and service contracts reads: "This contract may contain charges for insurance, debt cancellation agreement, service contracts, or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

In proposed §84.808(41) and (43), revisions have been made to the Code of Federal Regulations (C.F.R.) citations to provide more precise references to the provisions cited. These changes also remove the Latin phrase "et seq." ("and the following"), which has become less common in modern legal citations.

And finally, the sample model contract provided in Figure §84.809(b) incorporates the amendments previously outlined under §84.808(15), (16)(C)(i)(III), (34)(G), and (37), combining the permitted model clauses into one document.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments are in effect, Commissioner Pettijohn has also determined that the public benefits anticipated as a result of the proposed amendments will be that the commission's rules will provide greater clarity, consistency in the financing of motor vehicles, enhanced protection for consumers, the prevention of unnecessary litigation, and the availability of standard, reliable plain language provisions and forms for motor vehicle sales finance licensees.

Licensees are not required to adopt the model language contained in these rules but have the choice to do so. Further, the clauses being amended in the model contract are optional to the contract itself. Licensees who do not use these provisions in their contracts will not have any required update to their contract forms. Hence, for these licensees, there is no cost to comply with the amendments as proposed.

For licensees who do use the optional provisions in their contract forms, an update will be required either by adding the revised language to their copies of the model form, or by submitting a new non-standard contract submission including similar revisions.

Continuing the discussion of licensees who utilize these optional provisions, additional economic costs may be incurred by these licensees in order to comply with this proposal. For those who elect to modify their contract forms in accordance with these amendments, the anticipated costs would include the expenses associated with adding the new language to an existing form, copying a contract or new forms (approximately \$0.30-\$0.40 per contract or new form), and costs attributable to the loss of obsolete forms inventory. The agency has attempted to lessen the cost of the last item by providing licensees with a delayed compliance date.

The cost of submission of a non-standard contract form is impossible to predict as one licensee may fill out a single submission form and send that non-standard form to the agency, while another licensee may need to interface with the agency numerous times over whether the text is actually plain language.

Some licensees who use or lease specialized computer software programs for their business may experience some additional costs. These costs are impossible to predict. The agency has attempted to lessen these costs by providing the software programmers with the text of the forms. Whether programmers will use the proposed forms or create their own non-standard contract submission is not predictable. Whether the programmers will charge an additional fee for a document they do not have to draft is also not predictable.

To counteract any of the costs outlined in the preceding paragraphs, the agency would like to note that some of the issues addressed by these proposed changes were identified in prior litigation. Thus, the

proposed amendments will provide greater clarity to the industry as well as any courts that may review the retail installment sales contracts and related agreements. Consequently, the amendments may ultimately result in a cost benefit to licensees through the avoidance of litigation had they not updated their forms in accordance with the amendments.

Therefore, aside from the costs of updating contract forms and computer software incurred by those using the amended provisions, there is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no effect on individuals required to comply with the amendments as proposed.

The agency is not aware of any adverse economic effect on small or micro-businesses resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these amendments, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses.

Sections 84.808 and 84.809 provide model clauses and a sample model contract for motor vehicle retail installment transactions under Texas Finance Code, Chapter 348. Licensees are not required to adopt the model language contained in the rules. For those licensees utilizing the model provisions, the prior model language is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until September 1, 2013, to deplete supplies of existing forms during a

transition period after the anticipated effective date of the amendments.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.804. Disclosures and Contract Provisions Required by Texas Finance Code.

The contract shall have the following disclosures and provisions, as applicable:

(1) - (3) (No change.)

(4) Itemized charges not included in the cash price, as required by Texas Finance Code, §348.102(a)(7). Itemized charges may

include, but are not limited to, the following charges as applicable:

(A) State inspection fee;

(B) Documentary fee;

(C) Dealer's inventory tax;

(D) Sales tax;

(E) Other taxes not included in the cash price [~~the seller may disclose one aggregate amount for all taxes or may separately itemize one or more of the taxes~~];

(F) Deputy service fee;

(G) Title fee;

(H) License fee;

(I) Vehicle property insurance;

(J) Credit life and credit disability insurance;

(K) GAP insurance, as authorized by Texas Finance Code, §348.208(b)(4);

(L) Debt cancellation agreement;

(M) Theft protection plan;

(N) Service contract;

(O) Warranty contract; or

(P) Identity recovery service contract.

(5) - (8) (No change.)

§84.808. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (8) (No change.)

(9) Documentary fee.

(A) - (B) (No change.)

~~[(C) Until August 31, 2010, if the dealer does not charge an amount in excess of \$50, the following notice satisfies the requirements of Texas Finance Code, §348.006 if printed in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous and within reasonable proximity to the place at which the fee is disclosed. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The model clause is contained in the Itemization of Amount Financed. The documentary fee clause reads: "A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed \$50 (for a motor vehicle contract or a reasonable amount agreed to by the parties for a heavy commercial vehicle contract). This notice is required by law."]~~

~~[(D) Until August 31, 2010, if the dealer does not charge an amount in excess~~

~~of \$50, the following notices are sufficient Spanish translations of the documentary fee disclosure required by Texas Finance Code, §348.006. The parenthetical phrase may be inserted at the dealer's option or the disclosure may be made without the parenthetical phrase if the dealer does not charge an amount in excess of \$50 for either ordinary motor vehicles or heavy commercial vehicles or if the contract form is not used for heavy commercial vehicles. The Spanish translation may read:]~~

~~[(i) "Un honorario de documentación no es un honorario oficial. Un honorario de documentación no es requerido por la ley, pero puede ser cargada al comprador como gastos de manejo de documentos y para realizar servicios relacionados con el cierre de una venta. Un honorario de documentación no puede exceder \$50 (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación es requerida por la ley."; or]~~

~~[(ii) "Un cargo documental no es un cargo oficial. La ley no exige que se imponga un cargo documental. Pero éste podría cobrarse a los compradores por el manejo de la documentación y la prestación de servicios en relación con el cierre de una venta. Un cargo documental no puede exceder de \$50 para (un contrato de vehículo automotor o una cantidad razonable acordada por las partes para un contrato de vehículo comercial pesado). Esta notificación se exige por ley."]~~

~~[(E) Effective September 1, 2010, the documentary fee disclosures contained in paragraphs (9)(C) and (D) of this section are null and void.]~~

(10) - (14) (No change.)

(15) Prohibition against oral modifications. The contract may include a provision barring oral modifications of the contract. A unilateral change to a contract may nevertheless occur as prescribed by the procedures in Texas Finance Code, Chapter 349, Subchapter C. The model clause regarding prohibition against oral modifications reads:

Figure: 7 TAC §84.808(15)
{{NOTE: Changes are only contained in attached figure.}}

(16) Finance charge earnings methods:

(A) (No change.)

(B) True daily earnings method.

(i) (No change.)

(ii) Deferred sales tax.[:]

(I) Sales tax deferred without required credit life or credit accident and health insurance. If ~~[a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and]~~ the sales tax is deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(II) Sales tax deferred with required credit life or credit accident and health insurance. If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in subclause (I) of this clause must be provided.

(C) Scheduled installment earnings method.

(i) Sales tax advance. At the creditor's option a creditor may choose one of the following model clauses regarding sales tax advance:

(I) - (II) (No change.)

(III) If a retail seller discloses the annual percentage rate using a method other than the method that was used to compute the finance charge under the scheduled installment earnings method, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the contract rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges."

(ii) Deferred sales tax.

(I) Sales tax deferred without required credit life or credit accident

and health insurance. If ~~[a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and]~~ the sales tax is deferred, the contract rate disclosure should read: "The contract rate is ____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges."

(II) Sales tax deferred with required credit life or credit accident and health insurance. If a retail seller requires a retail buyer to purchase credit life or credit accident and health insurance and the sales tax is deferred, the contract rate disclosure contained in subclause (I) of this clause must be provided.

(17) - (33) (No change.)

(34) Default rights and repossession provisions. This paragraph details agreements allowing acceleration of the buyer's obligation upon the buyer's default or upon the creditor's determination of insecurity as permitted by Texas Business and Commerce Code, §1.309. The following provisions are samples of model clauses regarding some of the default rights and remedies of a creditor in a typical motor vehicle installment sale transaction:

(A) - (F) (No change.)

(G) Cancellation of optional insurance, debt cancellation agreement, and [or] service contracts. The model clause

regarding cancellation of optional insurance, debt cancellation agreement, and [or] service contracts reads: "This contract may contain charges for insurance, debt cancellation agreement, [or] service contracts, or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle."

(35) - (36) (No change.)

(37) Severability. ~~[Integration and severability.]~~

~~[(A) The contract may include an integration clause indicating that the parties to the contract intend it to be the final written expression of their agreement. The model clause regarding integration reads: "This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle."]~~

~~[(B)]~~ The contract may ~~[also]~~ include a severability clause providing that the invalidity of any portion of the contract does not render invalid other parts of the contract that would otherwise be valid. The model clause regarding severability reads: "If any part of this contract is not valid, all other parts stay valid."

(38) - (40) (No change.)

(41) Preservation of consumer's claims and defenses notice. This notice only applies if the motor vehicle financed in the contract was purchased for personal, family, or household use. The preservation of consumer's claims and defenses notice disclosure should be set out from the surrounding text so that the disclosure is in

all capitals, boldfaced and in at least 10-point type. The preservation of consumer's claims and defenses notice disclosure, as required by the Federal Trade Commission's preservation of consumer's claims and defenses notice, 16 C.F.R. §433.2 [~~§§433.1 et seq.~~], reads: "NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use."

(42) Used car buyer's guide. The used car buyer's guide disclosure should be set out from the surrounding text so that the disclosure is conspicuous. The disclosure should be prefaced by the words "In this box only, the word "you" refers to the Buyer." The used car buyer's guide disclosure, as required by the Federal Trade Commission's Used Car Regulation, 16 C.F.R. §455.3 [~~§§455.1 et seq.~~], reads:

(A) - (B) (No change.)

(43) (No change.)

§84.809. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment sales contract is presented in the following example.

Figure: 7 TAC §84.809(b) *{{NOTE: See changes in attached figure.}}*

(c) - (d) (No change.)

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 15, 2012.

Sealy Hutchings
General Counsel
Office of Consumer Credit Commissioner

Figure: 7 TAC §84.808(15)

"Any change to this contract must be dated and in writing. Both you and I must sign it. The written change must reference this contract by date, account number, vehicle identification number (VIN), stock number, or by any other reasonable means to be considered part of this contract. No oral changes to this contract are enforceable.

_____ Buyer _____ Co-Buyer"

Figure: 7 TAC §84.809(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)
 BUYER _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

SELLER/CREDITOR _____
 ADDRESS _____
 CITY _____ STATE _____ ZIP _____
 PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	<input type="checkbox"/> New <input type="checkbox"/> Demonstrator <input type="checkbox"/> Factory <input type="checkbox"/> Official/Executive <input type="checkbox"/> Used	USE FOR WHICH PURCHASED
							<input type="checkbox"/> PERSONAL, FAMILY OR HOUSEHOLD <input type="checkbox"/> BUSINESS OR COMMERCIAL <input type="checkbox"/> AGRICULTURAL

Trade-in: Year _____ Make _____ Model _____ VIN _____ License No. _____

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of my credit as a yearly rate.	The dollar amount the credit will cost me.	The amount of credit provided to me or on my behalf.	The amount I will have paid after I have made all payments as scheduled.	The total cost of my purchase on credit, including down payment of \$ _____
%	\$	\$	\$	\$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [True daily earnings:] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [Scheduled installment earnings method or sum of the periodic balances:] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [True daily earnings method:] If I pay all that I owe early, I will not have to pay a penalty. [Sum of the periodic balances method:] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] \$ _____ (1)

2. Downpayment = \$ _____
 [If netting add: (if negative, enter "0" and see Line 4.A. below)]
 Gross trade-in \$ _____
 - payoff by Seller \$ _____
 = net trade-in \$ _____
 [If not netting add: (if negative enter "0" and see Line 4.A. below)]
 + cash \$ _____
 + Mfrs. Rebate \$ _____
 + other (describe) _____ \$ _____
 Total downpayment \$ _____ (2)

3. Unpaid balance of cash price (1 minus 2) \$ _____ (3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
 - A. Net trade-in payoff [Alternative caption: "prior credit or lease balance"] to \$ _____
 - B. Cost of physical damage insurance paid to insurance company \$ _____
 - C. Cost of optional coverages with physical damage insurance paid to insurance company \$ _____
 - D. Cost of optional credit insurance paid to insurance company or companies \$ _____
 Life _____
 Disability _____
 - E. Debt cancellation agreement fee paid to the Seller \$ _____
 - F. Official fees paid to government agencies \$ _____
 - G. Dealer's inventory tax [Optional addition: (if not included in cash price)] \$ _____
 - H. Sales tax [Optional addition: (if not included in cash price)] \$ _____
 - I. Other taxes [Optional addition: (if not included in cash price)] \$ _____
 - J. Government license and/or registration fees \$ _____
 - K. Government certificate of title fee \$ _____
 - L. Government vehicle inspection fees \$ _____
 - M. Deputy service fee paid to dealer \$ _____
 - N. Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law. [Option to insert Spanish translation of disclosure here.] \$ _____
 - O. Other charges (Seller must identify who is paid and describe purpose) \$ _____
 to _____ for _____ \$ _____
 to _____ for _____ \$ _____
 to _____ for _____ \$ _____

- Total other charges and amounts paid to others on my behalf \$ _____ (4)

5. Amount Financed (3 + 4) \$ _____ (5)

[Optional caption: Taxes, title fee, license fee, and any state inspection fee (except for \$7.00 of each such inspection fee that will be retained by Seller) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the Seller may also retain part or all of the insurance, service contracts, and other charges.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums or debt cancellation fees that are not financed in the contract and may also delete other inapplicable portions. Under item 4, a creditor may add a line for "other insurance paid to insurance company."]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	DATE DUE

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for creditors who finance physical damage insurance. Creditors who do not routinely finance physical damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. *Physical damage insurance.* If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	_____	<input type="checkbox"/> \$ _____
Comprehensive	_____	<input type="checkbox"/> \$ _____
Fire, Theft, and Combined Additional Coverage	_____	<input type="checkbox"/> \$ _____
Other	_____	<input type="checkbox"/> \$ _____

B. *Optional coverages with physical damage insurance.* If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. *[Note: Alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.808(12).]*

☐ \$ _____ Towing and Labor Costs Reimbursement ☐ \$ _____ Rental Reimbursement
☐ \$ _____ Other: _____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES AND DEBT CANCELLATION AGREEMENT

Optional insurance coverages and debt cancellation agreement. The granting of credit will not be dependent on the purchase of either the insurance coverages or the debt cancellation agreement described below. It will not be provided unless I sign and agree to pay the extra cost. *[At creditor's option, the following may be added:]* The credit approval process will not be affected by whether or not I buy these insurance coverages or the debt cancellation agreement. *[Note: If this form is used for commercial transactions, a creditor has the option to bold the language in the preceding paragraph.]*

Coverage	Term in Months	Premium or Fee
GAP*	_____	<input type="checkbox"/> \$ _____
Invol. Unemployment	_____	<input type="checkbox"/> \$ _____
Debt cancellation agreement**	_____	\$ _____
Liability Insurance	_____	<input type="checkbox"/> \$ _____

\$ _____ per person \$ _____ property damage
\$ _____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

**YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT. I can cancel the debt cancellation agreement without charge for a period of 30 days from the date of this contract, or for the period stated in the debt cancellation agreement, whichever period ends later.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. A debt cancellation agreement is not insurance and is regulated by the Office of Consumer Credit Commissioner.

For the premiums or fees included above, I want the related optional coverages and debt cancellation agreement.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. *[At creditor's option, the following may be added:]* My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐ Credit Life, one buyer \$ _____ ☐ Credit Life, both buyers \$ _____ Term _____
☐ Credit Disability, one buyer \$ _____ ☐ Credit Disability, both buyers \$ _____ Term _____

[Optional additional sentence for balloon payment contracts:] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first _____ payments and does not cover the last scheduled payment. *[Optional additional language for true daily earnings method contracts:]* Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.

Buyer's Signature: _____ Date: _____

Co-Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.

(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be dated and in writing. Both you and I must sign it. The written change must reference this contract by date, account number, vehicle identification number (VIN), stock number, or by any other reasonable means to be considered part of this contract. No oral changes to this contract are enforceable.

Buyer

Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[Regular transaction using sum of the periodic balances method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A₂: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of \$ _____ per \$100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of \$ _____ per \$100.00.

[True daily earnings method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[Scheduled installment earnings method:] (Option A₁: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A₂: Sales Tax Advance) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option A₃: Sales Tax Advance) The contract rate is _____. This contract rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the contract rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____. This contract rate may not be the same as the Annual

Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: If the buyer's signature is dated) I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: If the buyer's signature is not dated) I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: If the buyer's signature is not dated) I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: If the buyer's signature is dated or not dated) I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____ Buyer	_____ Date	_____ Seller	_____ Date
_____ Co-Buyer	_____ Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occ.state.tx.us; (800) 538-1579, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and scheduled installment earnings method:] HOW YOU CALCULATE MY FINANCE CHARGE
REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than \$1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than \$1.00.) **[Scheduled installment earnings method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of \$25 (or \$150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than \$1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than \$1.00.

HOW YOU WILL APPLY MY PAYMENTS **[True daily earnings method:]** You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [True daily earnings method:] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES [True daily earnings method:] If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. [Scheduled installment earnings method or sum of the periodic balances:] If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of \$25 (\$50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE [Sum of the periodic balances method or scheduled installment earnings method:] If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

[INTEGRATION AND] SEVERABILITY CLAUSE [~~This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle.~~] If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer.

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradores de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.